546-D

REPORT BY THE

Comptroller General

OF THE UNITED STATES

COMPLETED 94

Stronger Federal Effort Needed In Fight Against Organized Crime

Organized crime is flourishing despite an improved strike force program. The Department of Justice has successfully indicted and prosecuted many high level crime figures, but a stronger Federal attack is needed.

GAO recommends that the Attorney General:

- Establish an executive committee in each strike force to ensure that Federal efforts are focused, coordinated, and directed.
- Concentrate the limited resources of the strike forces on indepth investigations and prosecutions of high level organized crime figures, and transfer uncomplicated cases to U.S. Attorneys' offices.
- Emphasize the use of case initiation reports and implementation of an evaluation system.

In addition, Congress needs to amend the Racketeer Influenced and Corrupt Organizations statute to help assist the Federal fight against organized crime activities.

GGD-82-2
DECEMBER 7, 1981

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-198049

The Honorable Max Baucus
United States Senate

Dear Senator Baucus:

This report addresses the need for the Department of Justice to better coordinate the Federal attack against organized crime. Justice has made numerous improvements to better plan, organize, and direct the operations of the strike force program. Although these efforts have improved strike force operations, more needs to be done to enhance the Federal effort against organized crime. The establishment of executive committees in each strike force, the concentration of the strike forces' limited resources on in-depth investigations and prosecutions, and the development of an evaluation system would improve the Government's efforts. Chapter 2 contains recommendations to the Attorney General that would improve the management of the organized crime strike forces and enhance the Federal effort to fight organized crime. Chapter 3 of the report reemphasizes our position on the need to amend the Racketeer Influenced and Corrupt Organizations statute to help the Government in its fight against organized crime.

This review was initiated pursuant to your September 17, 1979, request and subsequent agreements with your office. As agreed with your office, unless you publicly announce the contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO
SENATOR MAX BAUCUS

STRONGER FEDERAL EFFORT
NEEDED IN FIGHT AGAINST
ORGANIZED CRIME

D I G E S T

Organized crime derives billions of dollars in illegal income annually from its activities, and it is costing the Government about $100 million a year to fight organized crime. The strike force program was designed to focus an experienced and coordinated Federal enforcement and prosecutive attack against this major national problem.

Senator Max Baucus requested GAO (1) to evaluate Justice's role in impeding, restricting, and combating organized crime activities, and (2) to conduct a followup of a prior GAO report dealing with organized crime strike forces. (See app. I.)

Four years have passed since GAO's last report on the Federal effort to combat organized crime. This prior study highlighted many problems which hindered strike force effectiveness. Some of the problems have been addressed, but the Department of Justice needs to do more. It should establish executive committees to focus and direct the fight, concentrate strike force resources on indepth investigations and prosecutions of high level organized crime figures, and develop an evaluation system.

IMPROVEMENTS MADE AND NEEDED IN THE PROGRAM TO FIGHT ORGANIZED CRIME

Through the strike force program the Department of Justice has successfully indicted and prosecuted many high-level organized crime figures. It

--established a National Organized Crime Planning Council to coordinate efforts against organized crime;

--set broad priorities and targets to improve the focus and direction of the strike force;

--used case initiation reports to monitor strike force activities; and

--developed a self-evaluation system to measure strike force effectiveness.

GAO's work at the strike forces in Brooklyn, Chicago, Los Angeles, and Philadelphia showed that the Federal effort against organized crime can be further improved by:

--Establishing executive committees in each strike force for the purpose of improving the focus and direction of the program to fight organized crime. Active participation in these committees by strike force law enforcement agencies would improve the process for setting targets and priorities. (See pp. 14 to 16.)

--Concentrating the strike forces' limited resources on indepth investigations and prosecutions of high-level organized crime figures and allowing other cases to be handled by U.S. Attorneys' Offices. (See pp. 16 to 18.)

--Emphasizing the use of case initiation reports and implementing an evaluation system. (See pp. 19 to 24.)

IMPEDIMENTS IN THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS STATUTE

Law enforcement agencies and the Department of Justice are in agreement that the Racketeer Influenced and Corrupt Organizations (RICO) statute is a valuable weapon in the attack on organized crime because it provides for longer prison sentences and authorizes asset forfeiture--a judicially required divestiture of property without compensation. However, the RICO's potential impact in immobilizing organized criminal activities has not been realized. While the statute has been used to obtain significant sentences for convicted defendants, there have been few asset forfeitures. Emerging case law points to ambiguities and omissions in the statute that limit its effectiveness and warrant legislative change. (See ch. 3.)

Problems of major concern requiring legislative action are:

--Whether the forfeiture provisions of RICO should be read narrowly to cover only "interests" in an enterprise, thus preventing the Government from reaching money or other proceeds of illegal activities. (See pp. 30 and 31.)

--The inability of the Government to force forfeiture of substitute assets of the defendant when ill-gotten gains are transferred to third parties or are otherwise dissipated. (See pp. 31 to 34.)

In a prior GAO report issued on April 10, 1981, which deals with drug trafficking, GAO made several legislative recommendations that would help alleviate the problems with the use of the RICO statute. These recommendations are also applicable to the problems identified in this report. GAO believes the Congress needs to act on the legislative recommendations to help improve the fight against two national problems--drug trafficking and organized crime. (See p. 38.)

Forfeiture investigations could be enhanced by more extensive use of Internal Revenue Service expertise than is currently the practice. While financial expertise may not always be essential to a RICO investigation, Justice officials agree that closer cooperation would be helpful. (See pp. 38 and 39.)

SENTENCES GIVEN TO INDIVIDUALS CONVICTED OF ORGANIZED CRIME

The final outcomes of Federal efforts against organized crime are the indictment, conviction, and imprisonment of those who perpetrate these crimes.

From October 1977, through December 1979, the four strike forces GAO reviewed closed 180 organized crime cases involving 416 defendants. Of these 416 defendants, 273 received sentences. Of the 273 persons sentenced, only 61, or 22 percent, received prison sentences of over 2 years. While 90, or 33 percent, received

prison sentences of 2 years or less, another 122, or 45 percent, were only fined or placed on probation and received no prison sentence. During fiscal year 1981, Justice information showed that defendants convicted by all strike forces have been sentenced to an average term of about 43 months. Further, 44 percent received sentences of 2 years or more, 30 percent were sentenced to less than 2 years, and 26 percent received probation. (See ch. 4.)

RECOMMENDATIONS

GAO recommends that the Attorney General:

--Establish an executive committee in each strike force.

--Ensure that all Federal law enforcement agencies participating in the program to fight organized crime actively participate in the functions of the executive committees.

--Require that all cases not involving organized crime figures or utilization of extensive investigative resources be transferred to U.S. Attorneys' Offices for prosecution rather than using the limited resources of the strike forces to prosecute these cases.

--Emphasize that case initiation reports be prepared for all organized crime cases. This will provide a means to ensure that (1) strike forces' resources are applied only to cases involving organized crime figures or utilization of extensive investigative resources and (2) cases are transferred to U.S. Attorneys' Offices when appropriate.

--Ensure that an evaluation system is developed that will measure the performance and accomplishments of the strike forces so that management improvements can be made where appropriate.

AGENCY COMMENTS AND GAO EVALUATION

The Departments of Treasury and Justice agreed with many of the report's conclusions and recommendations. The Treasury Department stated

that the report is constructive and makes recommendations which will improve the fight against organized crime. Justice said that it has already taken successful steps to implement several of the necessary changes. (See ch. 5 and apps. IV and V.)

On the other hand, Justice took exception to GAO's recommendations in the areas of transferring strike force cases to U.S. Attorneys' Offices and the need for establishing executive committees in each strike force. Justice agreed that strike forces have prosecuted a small number of relatively uncomplicated cases and cases that would normally have been prosecuted by a U.S. Attorney's Office. However, Justice believes that generally strike forces are transferring all appropriate cases to U.S. attorneys. However, GAO has reemphasized that Justice needs to encourage the transfer of all cases not involving organized crime figures or utilization of extensive investigative resources from the strike forces to U.S. Attorneys' Offices so that the limited strike force resources can be concentrated on higher level organized crime cases. By limiting the strike forces involvement in minor cases or cases not related to organized crime individuals or activities, the strike forces will be in a much better position to coordinate the Federal attack on major organized criminal activities. A means to ensure that the proper cases are transferred to U.S. Attorneys' Offices is already in place--case initiation reports. The Department has instituted procedures to improve this process. By emphasizing the use of case initiation reports, the Department will be in a better position to ensure that minor and noncomplicated cases will be transferred to U.S. Attorneys' Offices from the strike forces.

Concerning the need for executive committees, GAO points out that, on the one hand, Justice disagrees with the need for such committees but, at the same time, acknowledges that changes to the Attorney General's guidelines have been recommended to establish executive committees that meet every 6 months rather than every 2 weeks. In addition, Treasury, a strike force member, believes in the benefits of these committees and believes they serve a useful purpose. However, Justice is merely objecting

to the rigid frequency of executive committee meetings rather than to the concept of executive committees. Thus, GAO believes that Justice should discuss the frequency of committee meetings with the agencies participating in the strike force program before it arbitrarily decides on how often committee meetings should be held.

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ABBREVIATIONS

ATF	Bureau of Alcohol, Tobacco and Firearms
DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
IRS	Internal Revenue Service
LCN	La Cosa Nostra
NOCPC	National Organized Crime Planning Council
OCRS	Organized Crime and Racketeering Section
RICO	Racketeer Influenced and Corrupt Organizations
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

Organized crime is a billion dollar business which affects the lives of millions of individuals and poses a serious problem for law enforcement agencies. The effects of organized crime on society are pervasive. Ill-gotten income from organized crime diverts money that could be used for legitimate productive purposes. To fight this major national problem, the Federal Government spends over $100 million a year.

Our review was requested by the Chairman, Subcommittee on Limitations of Contracted and Delegated Authority, Committee on the Judiciary, U.S. Senate. (See app. I.) The Chairman requested an evaluation of Justice's role in impeding, restricting, and combating organized criminal activities, and asked that our effort include the work of the strike forces, the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI). In addition, followup work was requested on our prior report that dealt with the activities of organized crime strike forces. 1/

OBJECTIVES, SCOPE, AND METHODOLOGY

We made our review to determine how effective Federal efforts were to combat organized crime. Specifically, we were interested in

--how Justice evaluates its successes and failures in dealing with organized criminal activity,

--Justice's use of the Racketeer Influenced and Corrupt Organizations (RICO) statute, and

--the level of cooperation and coordination between U.S. Attorneys' Offices and strike forces.

We examined agency records and held discussions with agency officials at the Criminal Division's Organized Crime and Racketeering Section (OCRS), Department of Justice, and at strike forces in Brooklyn, Chicago, Los Angeles, and Philadelphia.

1/"War on Organized Crime Faltering--Federal Strike Forces Not Getting the Job Done" (GGD-77-17, Mar. 17, 1977). A summary of this report is included in appendix II.

We analyzed all cases closed (180) by these four strike forces during fiscal years 1978 and 1979 and during the first quarter of fiscal year 1980. On the basis of our analysis, we developed conviction and sentencing data on all cases prosecuted by the four strike forces visited. In addition, we performed limited work at the strike forces in Boston, Miami, and Washington, D.C.

At the strike force locations where detailed work was performed, we examined an additional 675 randomly selected case files closed during fiscal years 1978 and 1979 and the first quarter of fiscal year 1980 by the:

--Bureau of Alcohol, Tobacco and Firearms (ATF),

--Drug Enforcement Administration,

--Federal Bureau of Investigation, and

--Internal Revenue Service (IRS).

We talked with headquarters and regional officials of Federal agencies participating in strike force activities and with U.S. attorneys in each of the cities we visited. Generally, our fieldwork was performed between March and September 1980. More detailed information on our scope and methodology is contained in chapter 6.

FEDERAL EFFORTS TO COMBAT ORGANIZED CRIME

Federal efforts to combat organized crime began in the Office of the Attorney General. In July 1954 the Attorney General established within the Criminal Division an Organized Crime and Racketeering Section to

--coordinate enforcement activities against organized crime,

--initiate and supervise investigations,

--accumulate and correlate intelligence data,

--formulate general prosecutive policies, and

--assist Federal prosecuting attorneys throughout the country.

In 1966, the President directed Federal law enforcement officials to review the national program against organized crime and designated the Attorney General to be the focal point for developing a unified program against racketeering. Because conventional methods of law enforcement had proven ineffective against organized

crime, OCRS between January 1967 and April 1971 established 18 Federal strike forces. The first strike force, established in Buffalo, New York, was staffed with Justice attorneys and representatives from Federal law enforcement agencies.

As of June 1981, 14 strike forces were still operating in the cities of Boston, Brooklyn, Buffalo, Chicago, Cleveland, Detroit, Kansas City, Los Angeles, Miami, Newark, New Orleans, Philadelphia, San Francisco, and Washington, D.C. Strike force suboffices were located in 12 other cities. Federal organizations participating in the strike force program include: ATF; U.S. Customs Service; Department of Labor; DEA; FBI; Immigration and Naturalization Service; IRS; Securities and Exchange Commission; U.S. Postal Service; U.S. Marshals Service; and U.S. Secret Service. 1/

In 1970 the National Council on Organized Crime was established to formulate a strategy to eliminate organized crime. The Council, which was chaired by the Attorney General, failed in its attempts to formulate a national strategy to fight organized crime. In November 1976, the National Organized Crime Planning Council (NOCPC) was formed to facilitate detailed planning and coordination between the strike forces and Federal law enforcement agencies. The intent of the Council was to facilitate the exchange of information among these agencies in order to provide a more coordinated approach to the Federal efforts to combat organized crime.

STRIKE FORCE OPERATIONS

Strike force involvement generally unfolds in three steps: (1) initial investigation by a law enforcement agency, (2) investigation by the strike force, and (3) indictment by a grand jury and prosecution by strike force attorneys.

Initial investigation by a law enforcement agency

Strike forces obtained about 83 percent of their assignments from investigations conducted by the four law enforcement agencies participating in the program (ATF, DEA, FBI, and IRS). The FBI supplies approximately 55 percent of all cases for prosecution because of its broad jurisdiction in areas controlled and dominated by organized crime activity. Other agencies, such as the Securities and Exchange Commission, Postal Service, and Secret Service, investigate organized crime cases if a violation within their jurisdiction occurs or on behalf of the strike force or primary investigative agency. Participating law enforcement

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1/Strike forces are composed of representatives from various law enforcement agencies and Justice Department attorneys.

agencies generally initiate investigations after criminal activity has been identified. The investigating agency determines the stage at which an investigation is to be brought to the strike force's attention. The investigative agency's representative to the strike force discusses the investigation with the strike force attorney, who decides whether or not it is a strike force matter. In some instances the matter may be referred to a U.S. Attorney's Office or to State and local authorities.

Investigation by the strike force

After an investigation is presented to the strike force, it is assigned to an attorney(s), who prepares a case initiation report, which is forwarded to OCRS for approval. This report normally indicates that the strike force intends to spend a significant amount of time on the investigation.

Upon completion of the investigation, a prosecutive memorandum is prepared, setting forth the particulars in the case, laws involved, statements of facts and evidence, problems of evidence, and conclusions and recommendations. After review by the attorney-in-charge, prosecutive memorandums are sent to the respective U.S. attorney and to OCRS for review and approval. The Assistant Attorney General for Justice's Criminal Division makes the prosecutive decision should any conflicts arise on the case's prosecutive merit.

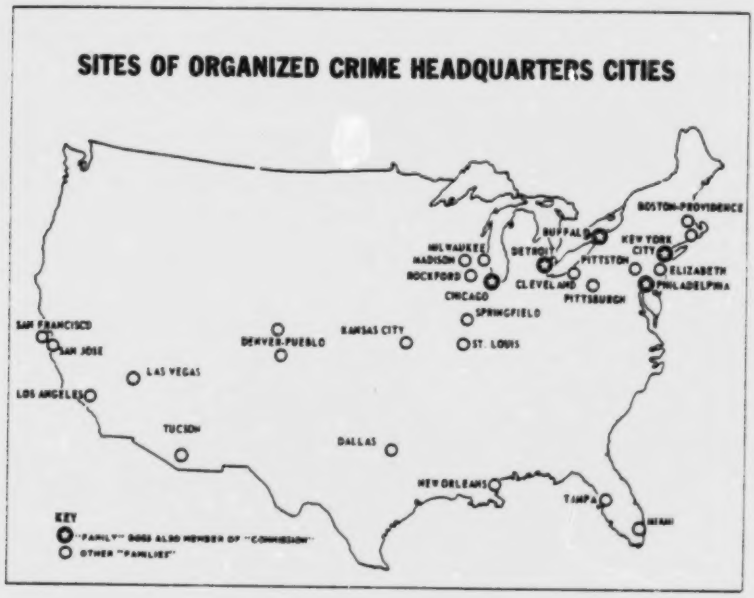
Indictment and prosecution

After prosecutive approval is obtained, the strike force attorney(s) presents the case before a grand jury seeking an indictment. The grand jury determines whether to issue indictments, how many, and to whom. This determination is generally made by subpoenaing witnesses and records, and by compelling testimony. If the grand jury issues indictments, the case is generally prosecuted by strike force attorneys who may be assisted by a U.S. Attorney's Office.

ORGANIZED CRIME CONCENTRATION AND FAMILY STRUCTURE

Organized crime is located in various parts of the United States and is involved in legitimate as well as illegitimate activities.

The following charts were supplied by the FBI and show where organized crime is concentrated, how an organized crime family is structured, and the type of activities in which it engages.


SITES OF ORGANIZED CRIME HEADQUARTERS CITIES
BOSTON-PROVIDENCE
BUFFALO
NEW YORK CITY
MILWAUKEE
MADISON
DETROIT
PITTSTON
ELIZABETH
ROCKFORD
CLEVELAND
PHILADELPHIA
CHICAGO
PITTSBURGH
SPRINGFIELD
SAN FRANCISCO
DENVER-PUEBLO
KANSAS CITY
ST. LOUIS
SAN JOSE
LAS VEGAS
LOS ANGELES
TUCSON
DALLAS
NEW ORLEANS
TAMPA
MIAMI
KEY
"FAMILY" BOSS ALSO MEMBER OF "COMMISSION"
OTHER "FAMILIES"

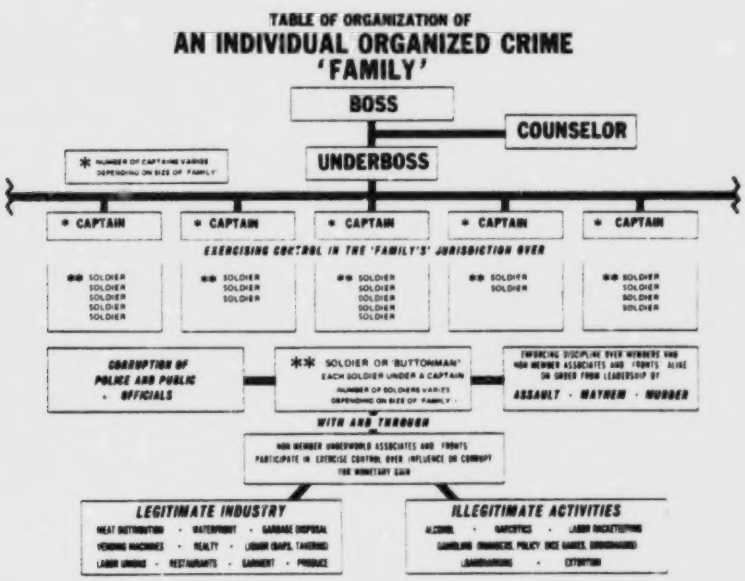


TABLE OF ORGANIZATION OF
AN INDIVIDUAL ORGANIZED CRIME
'FAMILY'
BOSS
COUNSELOR
UNDERBOSS
* CAPTAIN
* CAPTAIN
* CAPTAIN
* CAPTAIN
* CAPTAIN
EXERCISING CONTROL IN THE 'FAMILY'S' JURISDICTION OVER
** SOLDIER
SOLDIER
SOLDIER
SOLDIER
SOLDIER
** SOLDIER
SOLDIER
SOLDIER
** SOLDIER
SOLDIER
SOLDIER
SOLDIER
SOLDIER
** SOLDIER
SOLDIER
** SOLDIER
SOLDIER
SOLDIER
SOLDIER
CORRUPTION OF
POLICE AND PUBLIC
OFFICIALS
** SOLDIER OR 'BUTTONMAN'
EACH SOLDIER UNDER A CAPTAIN
ASSAULT · MAYHEM · MURDER
WITH AND THROUGH
LEGITIMATE INDUSTRY
ILLEGITIMATE ACTIVITIES

SYNOPSIS OF FINDINGS AND RECOMMENDATIONS PREVIOUSLY REPORTED BY GAO

Our prior report on Justice's efforts to combat organized crime showed that: (1) there was no national strategy on how to fight, or even agreement on what, organized crime was; (2) Federal efforts to combat organized crime were hampered because strike forces had no authority over participating agencies and no statements of objectives or plans to direct their efforts; and (3) Justice had no system for evaluating the effectiveness of the national organized crime effort or of individual strike forces. In that report, we recommended in part that the Attorney General:

--Define organized crime so that consistent criteria could be applied nationwide for selecting the targets of the strike forces.

--Develop specific goals as well as a unified approach to fighting organized crime and set specific priorities in a clear mission statement to be used by all strike forces.

--Develop, in conjunction with the other participating agencies, agreements delineating each agency's (1) role in the strike forces, including the role of the attorney-in-charge, and (2) commitment of resources.

In commenting on that report, Justice agreed "that the Federal effort against organized crime can be better planned, organized, executed and directed," and that it would work towards these objectives. However, after 4 years Justice has not completely accomplished these objectives. The remaining chapters discuss the issues and problems we believe need to be corrected to enhance the Federal effort to fight organized crime.

CHAPTER 2

CHANGES MADE AND IMPROVEMENTS NEEDED IN THE MANAGEMENT OF THE PROGRAM TO FIGHT ORGANIZED CRIME

Efforts on the part of Justice to better plan, organize, and direct the Federal effort against organized crime have improved. The improvements have led to strike forces successfully obtaining indictments against and prosecuting high level organized crime figures. Management techniques, such as the establishment of the National Organized Crime Planning Council (NOCPC), the setting of broad priorities and targets, the use of case initiation reports, and the initial development of an evaluation system have added to the effectiveness of the program to fight organized crime. Although these efforts have improved strike force operations and are a step in the right direction, more needs to be done.

The Federal effort against organized crime can be improved by:

--establishing executive committees in each strike force for the purpose of improving the focus and direction of the program;

--requiring that Federal law enforcement agencies actively participate in the setting of strike force priorities and targets;

--concentrating strike forces' limited resources on indepth investigations of high-level organized crime figures and allowing other cases to be handled by U.S. Attorneys' Offices; and

--continuing efforts to improve the use of case initiation reports and to develop and implement an evaluation system.

IMPROVEMENTS MADE IN THE MANAGEMENT OF THE PROGRAM TO FIGHT ORGANIZED CRIME

The program to fight organized crime has been better planned, organized, and directed as a result of the establishment of NOCPC. The minutes of NOCPC meetings show that during the period October 1, 1977, through December 31, 1979, NOCPC had (1) successfully interacted with strike forces and law enforcement agencies, (2) established a definition of organized crime, and (3) developed general priorities for strike forces to follow.

As a result of improvements made in the management of the program, strike forces' efforts have resulted in an increase in the indictment and conviction of high-level organized crime figures.

National Organized Crime Planning Council established

Our 1977 report pointed out that the former National Council on Organized Crime never accomplished its responsibility of formulating a national strategy to eliminate organized crime. A Justice official told us that the members of the National Council were "too far removed from the street agent level and too far up the chain of command to be effective."

There was a desire by OCRS and other agencies to get this body closer to the working level. As a result, in November 1976, OCRS proposed the formation of NOCPC. It was intended that NOCPC would be a multiagency body that would be responsible for promoting closer cooperation between strike force attorneys and law enforcement agencies as well as facilitating the exchange of information among all parties to provide a more structured and coordinated approach to Federal efforts against organized crime.

The first NOCPC meeting was held on January 11, 1977, and the following agencies were represented:

--Department of Justice - Immigration and Naturalization Service, Criminal Division, OCRS, FBI, and DEA;

--Department of Treasury - ATF, Customs Service, IRS, and Secret Service;

--Department of Labor;

--Securities and Exchange Commission; and

--United States Postal Service.

Three additional agencies later joined the NOCPC--the Law Enforcement Assistance Administration, in March 1977; the International Association of Chiefs of Police, in August 1977; and the Inspector General of the U.S. Department of Agriculture, in September 1978.

In contrast to the former National Council, which was "chaired" by the Attorney General and whose members were at the Assistant Secretary level, NOCPC is chaired by the OCRS chief. In addition, the NOCPC members consist of managers from the division, branch, or section levels of the various agencies involved in the fight against organized crime.

Justice officials told us that there were several other reasons for establishing NOCPC. These officials said that it would be an effective way to get headquarters personnel of law enforcement agencies into the field to meet with their own personnel as well as personnel of other member agencies. They said also that some investigative agencies had drifted away from the coordinated effort against organized crime during the Watergate era because their images had been tarnished. Further, NOCPC was established to encourage investigative agencies' national officials to persuade field offices to get back into the business of fighting organized crime.

In addition, a Justice official stated that the concept of NOCPC was used to obtain agency cooperation as opposed to the Attorney General seeking a direct order from the President or developing extensive interagency agreements as recommended in our prior report. An IRS official told us that the establishment of NOCPC was necessary to develop a medium through which OCRS and strike forces could show all law enforcement agencies that they had internal Justice support.

NOCPC activities

A Justice official stated that NOCPC's early activities had been geared to stimulating investigative agencies' interest in the Federal effort against organized crime. NOCPC was much more active than the former National Council. The minutes of NOCPC meetings showed that this body met 20 times during the period October 1, 1977, through December 31, 1979. The meetings normally followed field visits to one of the strike forces. During field visits each agency makes a general presentation regarding the organized crime problem in its area of responsibility. These "public" sessions are followed the next day with private meetings between OCRS/strike force attorneys and representatives of individual agencies. The private sessions are devoted to discussing ongoing cases and to resolving problems between agencies or between the strike force and the agency. The headquarters representatives from the four law enforcement agencies (ATF, DEA, FBI, and IRS) covered by our review, as well as Justice officials, told us that this process is a positive effort to promote the sharing of information and interagency cooperation. In fact, one representative told us that some joint-agency investigations were a direct result of NOCPC meetings.

In addition, NOCPC established various ad hoc subcommittees to tackle such issues as developing investigations for tracing money flows of organized crime, evaluating the efforts of strike forces, or developing a definition of organized crime. Also, NOCPC was responsible for developing and establishing the general priorities so a national strategy of directing Federal efforts towards selected criminal activities could be implemented. The development of priorities and a definition of organized crime

were recommended in our prior report on strike forces and are discussed further in the following sections.

Agreement reached on a definition of organized crime

Our prior report recommended that the Attorney General define organized crime so that consistent criteria could be applied nationwide for selecting the targets of the strike forces. The report concluded that, while strike forces were created to fight organized crime, their efforts were hampered because confusion over the definition of organized crime existed among Federal agencies. At one extreme organized crime was defined to include only members of La Cosa Nostra (LCN), while at the other extreme organized crime was defined as any group of two or more persons formed to commit a criminal act.

OCRS, through NOCPC, developed a definition of organized crime that was approved by all members of NOCPC. The definition and its preamble, distributed as a handout to all members of the strike forces on March 23, 1979, stated:

> "'Organized Crime' refers to those self-perpetuating, structured and disciplined associations of individuals or groups, combined together for the purpose of obtaining monetary or commercial gains or profits, wholly or in part by illegal means, while protecting their activities through a pattern of graft and corruption.
>
> "Organized crime groups possess certain characteristics which include but are not limited to the following:
>
> A) Their illegal activities are conspiratorial;
>
> B) In at least part of their activities, they commit or threaten to commit acts of violence or other acts which are likely to intimidate;
>
> C) They conduct their activities in a methodical, systematic, or highly disciplined and secret fashion;
>
> D) They insulate their leadership from direct involvement in illegal activities by their intricate organizational structure;
>
> E) They attempt to gain influence in Government, politics, and commerce through corruption, graft, and legitimate means;

F) They have economic gain as their primary goal, not only from patently illegal enterprises such as drugs, gambling and loansharking, but also from such activities as laundering illegal money through and investment in legitimate business."

Although the definition of organized crime was approved by all members of the strike forces, the OCRS chief told us that, by itself, it is too general and not sufficient for developing targets. He said that instead, this definition must be used in conjunction with national priorities developed by NOCPC.

National priorities developed for strike forces

The OCRS chief told us that NOCPC developed five national priorities for organized crime investigations. These priorities are labor racketeering, infiltration of legitimate business, public corruption, narcotics conspiracies, and violence. NOCPC acknowledged that it may be necessary to establish a local strike force priority if significant organized crime activity falls outside of the national priorities. Justice officials told us that the priorities have had the effect of moving investigative strategies away from individual cases and attempts to prosecute a person on any charge toward a strategy of developing cases against high-level criminal activities in the priority areas.

Because the five national priorities were established in the summer of 1977 and a case may be open for 2 to 5 years before a judicial decision is handed down, many cases closed after 1977 may not have met the priorities. This resulted because law enforcement agencies continued investigations that started before the priorities were established even though they did not comply with the priorities. Justice officials contend that cases initiated by the strike forces after mid-1977 reflect the national priorities; however, many of these cases are still pending. Because we restricted our examination to strike force cases closed in fiscal years 1978 and 1979 and in the first quarter of fiscal year 1980, our universe included some cases that did not fall within the five priority areas. Because of this we obtained information on cases that were closed after our December 31, 1979, cutoff date. Since then a number of cases resulted in the indictment or conviction of high level organized crime figures in the four strike forces we visited, as well as other strike forces across the country. Some of the more significant cases follow:

--On August 27, 1980, two Los Angeles organized crime family members and two organized crime associates were convicted of racketeering and narcotics offenses. This case was handled by the Los Angeles strike force.

--On November 21, 1980, the boss of one of New York's organized crime families was convicted of racketeering, racketeering conspiracy, and conspiracy to commit bankruptcy fraud. In addition, on May 1, 1980, the acting family boss of another New York organized crime family along with his bodyguard were convicted of loansharking and conspiracy. The prosecution of the first case was handled by the Organized Crime Strike Force Unit of the U.S. Attorney's Office of the Southern District of New York with assistance during the investigation from the Brooklyn strike force. The second case was handled by the Brooklyn strike force.

--On July 18, 1980, the boss of the Kansas City organized crime family along with two associates were convicted of conspiracy and the use of interstate facilities in aid of racketeering/bribery. The prosecution was conducted by the Kansas City strike force.

--On October 17, 1980, two high ranking members of a Detroit organized crime family pled guilty to charges of racketeering and conspiracy. The convictions stemmed from the defendants' unlawful takeover of a legitimate business. The prosecution was conducted by the Detroit strike force.

--On January 21, 1981, an organized crime figure and three associates were convicted of RICO/bribery, conspiracy, travel-act bribery, and illegal gambling. This conviction was the culmination of a 3-year investigation by the FBI, Philadelphia police department, and the Philadelphia strike force. This case also produced a July 14, 1980, indictment of a high ranking organized crime figure in Philadelphia for illegal gambling violations and making bribery payments to Philadelphia police officers. Finally, on February 19, 1981, a three-count indictment was returned against 10 individuals for conspiracy in conducting an enterprise through a pattern of racketeering and conducting an illegal gambling business. Some of those indicted included high-ranking members of a Philadelphia organized crime family. The prosecutions were conducted by the Philadelphia strike force.

--On February 22, 1980, one organized crime family member was convicted and four others pled guilty to conspiracy and loansharking charges. In

addition on January 19, 1981, two organized crime family members were convicted of Hobbs Act violations and using extortionate means to collect an extension of credit. The prosecutions were conducted by the Chicago strike force.

MORE NEEDS TO BE DONE TO BOLSTER THE PROGRAM TO FIGHT ORGANIZED CRIME

The strike force concept was designed to direct an experienced and coordinated Federal enforcement and prosecutive attack on organized crime. To enhance the effectiveness of this concept, the Attorney General required the establishment of an executive committee in each strike force. The committee was to meet every 2 weeks and review the viability of ongoing efforts. Our review showed that in place of regular executive committee meetings, strike forces have held informal meetings on an irregular basis. These meetings have not resulted in a coordinated approach to reviewing and analyzing each agency's activities or in the formulation of specific priorities and targets to break up organized crime. As a result, law enforcement agencies have not actively participated in setting targets and priorities and often have investigated cases which were not of the significant nature envisioned under the strike force concept.

Closed organized crime cases prosecuted by the strike forces showed that strike forces were accepting cases which could have been transferred to the U.S. Attorneys' Offices. In our opinion, these cases were not of a caliber to warrant the expenditure of strike force resources. Twenty-nine of the 180 cases prosecuted by the four strike forces visited could have been transferred to the U.S. Attorneys' Offices. Although these cases may have warranted prosecution, such action should not have been taken by a unit charged with the responsibility of handling only those cases requiring the extensive utilization of significant resources.

Although OCRS officials have given various reasons for the handling of these cases by the strike forces, we believe that a dedicated unit charged with specific responsibilities and having limited resources should be extremely selective in deciding which cases to prosecute.

The establishment of executive committees, active participation on the part of law enforcement agencies in the workings of these committees, and the concentration of strike force resources on indepth investigations and prosecutions should correct this problem. We found also that case initiation reports, used to keep OCRS fully informed of potential prosecutions, were not being submitted. In addition, Justice had not implemented a formal system for measuring the effectiveness of the program to fight

organized crime or the impact each strike force was having on the organized crime problem.

Strike force executive committees have not been established

Attorney General guidelines require that each strike force convene an executive committee no less than every 2 weeks. The committee is to be composed of the U.S. attorney, the strike force attorney-in-charge, the FBI special agent-in-charge, key enforcement and audit officials from IRS, and officials from other agencies having investigative responsibilities for organized crime. During these meetings, the committee is supposed to (1) review, analyze, and discuss the Federal effort against organized crime, (2) formulate and implement a program and plan to break up existing organized crime rackets, and (3) devise ways to facilitate communication and consultation among Federal agencies fighting organized crime.

None of the four strike forces we reviewed had established an executive committee. In three of the strike forces, meetings were held where various law enforcement agencies and strike force representatives met on an intermittent basis and exchanged general information. In the remaining strike force, attorneys said that the environment and atmosphere of these type of meetings would not be the appropriate settings to discuss the rather complex and sensitive issue involved with analyzing each agency's activities and formulating plans to attack organized crime. They said that this was more appropriate for discussion with representatives of each agency by the strike force attorney-in-charge on a one-to-one basis.

In order to break up a criminal organization, coordination of all law enforcement agencies becomes essential. An effective approach must provide for some form of central direction and coordination and still allow for the advantages of specialization. The key to the success of the strike force concept of directing a coordinated Federal attack on organized crime is the ability of the individual law enforcement agencies to conduct investigations of significant organized criminal activities in their area of expertise. For the most part, strike forces can prosecute only those cases brought to them by law enforcement agencies. The strike force attorney-in-charge cannot control activities of law enforcement agencies because he/she does not have line authority to direct investigative resources and therefore must accept these cases for prosecution.

Because strike forces cannot control the investigative activities of law enforcement agencies, a coordinated approach to setting priorities and targets does not exist. Priorities and targets are developed by each agency independently of the others, and an overall national coordinated approach is not used. As a

result, agencies make their own individual target selections based on broad priorities set by Justice and only coordinate their activities with the strike forces on a case-by-case basis.

A review of law enforcement agencies' case files disclosed investigations such as citizen band radio violations, local bookmakers, unfair labor practices, and other cases that did not result in prosecution. From October 1, 1977, through December 31, 1979, the ATF, DEA, FBI, and IRS closed 2,831 investigations of organized crime in the strike force locations visited. Of these, we sampled 675 investigations for detailed review. The following shows the disposition of the sampled cases.

	Agency and number of cases involved					
Category	ATF	DEA	FBI	IRS	Total	Percent
Administratively closed	57	35	180	96	368	55
Declination	27	17	75	24	143	21
Final prosecution	32	72	21	28	153	23
Other (note a)	1	4	4	2	11	1
Total	117	128	280	150	675	100

a/Includes fugitive status, change of venue, complaint dismissed by magistrate, or two cases combined into one.

As shown above, most cases--511, or 76 percent--were closed administratively by the agencies themselves or declined for prosecution by the strike forces or U.S. attorneys. These cases were closed because they were not significant or prosecutable based on the evidence developed or the limited potential for gathering more supportive evidence. On the basis of our sample and a weighted estimate by agency, 1,765, or 62 percent of the total 2,831 organized crime cases completed, were administratively closed by the four law enforcement agencies, while another 653, or 23 percent, were declined for prosecution by the strike forces or U.S. attorneys as shown below.

Agency	Total organized crime investigations closed October 1, 1977, through December 31, 1979	Weighted estimate	
		Closed administratively	Declined
ATF	270	132	56
DEA	175	53	24
FBI	1,827	1,228	477
IRS	559	352	96
Total	2,831	1,765	653

Without a coordinated approach to reviewing and analyzing law enforcement agency activities and the formulation of specific priorities and targets to break up organized crime, it will be difficult to minimize the investigative resources spent on cases that never reach prosecution.

Executive committees are one way in which strike forces and law enforcement agencies could formulate plans and agree on priorities and targets to be investigated. Through the use of the committees, strike forces would have a better understanding of what investigations law enforcement agencies had ongoing and be in a better position to facilitate the exchange of ideas. With the establishment of executive committees, the number of investigations administratively closed and declined could be reduced through the setting of joint priorities and targets.

Strike forces prosecuting cases that could have been prosecuted by U.S. Attorneys' Offices

Strike forces are not always transferring to U.S. attorneys, as required, cases that do not warrant strike force attention. The Attorney General guidelines state that cases which will not require extensive investigation or utilization of significant strike force resources and facilities shall be promptly transferred to the U.S. attorney, even if they involve organized crime figures. Our review of 180 cases prosecuted by the four strike forces visited disclosed that 29 cases should have been transferred to the U.S. Attorney's Office for prosecution. Had these cases been transferred, strike forces could have concentrated their limited resources on cases involving high level organized crime prosecutions. The following table shows the number of cases we believe should have been transferred by the strike forces to U.S. Attorney's Offices.

Strike force	Total cases prosecuted	Number of cases that should have been transferred
Brooklyn	69	6
Chicago	44	10
Los Angeles	28	8
Philadelphia	39	5
Total	180	29

One rule consistently followed by the strike forces, U.S. attorneys, and investigative agencies is that strike forces have jurisdiction over any case involving La Cosa Nostra (LCN). Other than this, there is no consistent approach regarding what cases the strike forces should prosecute and what cases should be prosecuted by the U.S. attorney. Each of the investigative agencies has its own classification of organized crime. While all agree that LCN cases are clearly strike force cases, other types of organized criminal activity, such as motorcycle gangs and non-LCN ethnically oriented criminal groups, might be considered "organized crime" depending on the personal judgements and characterizations of the investigative agents and the strike force attorneys. Therefore, outside of LCN cases, what is brought to and prosecuted by the strike forces can be, and in fact is, rather diverse and broad. Closer U.S. attorney/strike force coordination could have resulted in the transfer of 29 cases or 16 percent of the total 180 cases and would have saved valuable strike force time. The following examples are cases which we believe should have been referred to a U.S. Attorney's Office for prosecution.

--One defendant was indicted for selling and possessing counterfeit postage stamps. Two others were indicted for conspiracy. In a memorandum to the U.S. attorney, the strike force stated the case did not involve organized crime, but that unless the U.S. attorney wanted the case the strike force would proceed since it was a good case for the strike force attorney to learn Federal court procedures.

--The defendants in another case were involved in the theft and resale of tools. They had no organized crime association. The strike force prosecuting attorney confirmed the lack of an organized crime connection but prosecuted the case anyway.

--Another case involved a scheme where defendants bought a meat company and ran it into bankruptcy after running up excessive debts and selling off inventories. They had no organized crime connection other than they were doing what some organized crime figures were doing to legitimate businesses.

In a letter dated February 20, 1981, to our office, the OCRS chief stated that strike forces, in some instances, may prosecute cases that do not justify the use of special skills and resources. However, he justified the appropriateness of prosecuting such cases by stating that a complex investigation will often generate a number of minor spinoff cases involving perjury, tax fraud, false statements, etc., which U.S. attorneys have refused to accept because of their unfamiliarity with the underlying facts and circumstances of the case. In addition, he stated that minor or simple charges are often brought against a defendant as part of a more elaborate prosecutive strategy to "flip" an organized crime member so the defendant becomes a witness in a more significant case. He also stated that simple cases are prosecuted in order to provide essential trial experience for new strike force attorneys.

Our analysis of the comments received from strike force attorneys-in-charge of the 29 cases we questioned, showed that 7 were spinoff cases, 4 were flip cases, 4 were training cases, and 8 had no organized crime involvement but were prosecuted anyway. We did not receive any reply on 6 cases. We believe that a dedicated unit with limited resources should limit the number of minor cases it handles and be extremely selective in deciding which cases to prosecute. This can be accomplished by

--keeping the U.S. attorneys involved in the details of complex cases so that if minor spinoff cases evolve, the U.S. Attorneys' Offices will be able to prosecute the cases;

--training inexperienced strike force attorneys in the U.S. Attorneys' Offices prior to their being assigned to the strike force thereby eliminating the necessity of strike forces handling training cases; and

--transferring to the U.S. Attorneys' Offices those cases in which the potential of a defendant becoming a witness in a more significant case is questionable.

Case initiation reports not prepared

Case initiation reporting procedures were developed to ensure that OCRS priorities were being followed in case development and prosecution and to provide a vehicle by which OCRS could monitor potential prosecutions handled by strike forces. However, case initiation reports were not prepared or could not be located for about 67 percent or 121 of the 180 cases prosecuted by the strike forces during fiscal years 1978 and 1979, and during the first quarter of fiscal year 1980. Therefore, OCRS had no way of ensuring that appropriate cases were being handled by the strike forces.

The Attorney General's guidelines state that no investigation shall be opened by a strike force without the submission of a case initiation report. The guidelines specifically called for case initiation reports for all cases opened and pending as of December 10, 1976. Of the 180 cases reviewed, we found that only 59 had case initiation reports. The number of case initiation reports for each strike force location visited follows.

Strike force location	Total number of cases	Number of reports	Percent of total
Brooklyn	69	17	25
Chicago	44	15	34
Los Angeles	28	12	43
Philadelphia	39	15	38
Total	180	59	33

As the above table shows, 67 percent of the case initiation reports were never prepared or could not be located. Justice officials told us that just because some case initiation reports were not available does not mean that they were not informed about the cases prior to the expenditure of strike force attorney resources.

Justice officials told us that one reason case initiation reports were not submitted was that some cases may have been initiated before the system was in effect and although they were to be submitted for all pending cases this was not always done. Our review disclosed that defendants in five cases in Brooklyn, four in Chicago, one in Los Angeles, and two in Philadelphia were indicted prior to the system taking effect. In addition, a new case initiation report is not required to be submitted for additional subjects of an investigation in which a case initiation report had previously been submitted. We identified seven cases

in Brooklyn, one in Los Angeles, and three in Philadelphia which fit this latter category. Taking into consideration the cases (12) opened prior to the guidelines taking effect and, the cases (11) relating to other previously opened cases having a case initiation report, 98 or about 54 percent still could not be located.

Strike force attorneys-in-charge at three of the four strike forces visited provided a variety of reasons why case initiation reports had not been prepared. These reasons were:

--reports were not prepared for IRS cases;

--reports have been prepared for each case since July 1978, but prior to that date there is a good possibility that not all reports were prepared; and

--reports have not been prepared for those cases pending at the time the guidelines were established or for investigations which were spinoffs from a major case for which an earlier case initiation report may have been prepared.

Our analysis of the reports by the indictment date showed that the Philadelphia and Chicago strike forces had improved their operations by submitting 43 and 51 percent more case initiation reports, respectively, in fiscal year 1979 compared with earlier years. There was no noticeable improvement for the Brooklyn strike force in submitting reports for approval. We could not determine whether the situation in the Los Angeles strike force had improved due to the lack of indictments in fiscal year 1979 compared to earlier years. The OCRS chief told us that the report process was currently being complied with.

Without case initiation reports OCRS does not have a systematic way to evaluate whether, and assure itself that, the strike forces are developing and prosecuting cases within Justice's priorities. Case initiation reports are a necessity if OCRS hopes to properly manage the program and keep itself fully aware of the kinds of cases that are being accepted for prosecution and whether or not they meet established Justice priorities.

No method to determine effectiveness in combating organized crime

Our 1977 report recommended that the Attorney General develop specific criteria and establish the required information system to evaluate the effectiveness of the national and individual strike force efforts. Our review disclosed that neither OCRS nor the individual strike forces had established a formal

system for measuring their effectiveness in combating organized crime. Although both headquarters and strike force attorneys could cite examples of significant cases (see pp. 11 to 13) which impacted on either the organized crime hierarchy or criminal activities, none could demonstrate the program's overall impact on the organized crime problem, either from a national or local standpoint.

In the absence of a formal evaluation system, OCRS and the strike forces have used a variety of subjective evaluations for assessing their operations. OCRS identified four types of informal methods that it uses to evaluate its efforts against organized crime. One method is the NOCPC visits to strike forces. During these visits the OCRS officials have a chance to hear what the strike forces and law enforcement agencies are doing and obtain an idea of whether the strike forces are going in the right direction. A second method OCRS uses to evaluate strike forces is by monitoring case initiation reports sent to headquarters. The OCRS chief told us that a series of reports can be looked at to see if the strike force is handling good cases. A third method is to compare the case initiation reports submitted against the resulting indictments. For example, if case initiation reports are elaborate and appear to reflect "quality" cases but the resulting indictments are "nickel and dime," then OCRS is alerted that something may be wrong at the strike force. A fourth method in which strike forces are evaluated involved a constant line of communication between the OCRS deputy chiefs and the strike force attorneys, including site visits. These methods, while showing the general direction of a strike force's efforts, do not show how effective they have been in reducing organized crime over a period of time.

There are no formalized criteria against which strike force efforts can be measured. OCRS officials told us that they are not satisfied with an informal mechanism for evaluating strike force efforts. Some officials and minutes of NOCPC meetings indicate that the NOCPC evaluations seem to concentrate on success stories rather than on indepth evaluation. A Justice official told us that outside of NOCPC the individual contacts between OCRS deputy chiefs and the strike forces were geared to attorney and legal issues rather than an evaluation of the entire strike force effort. In addition, since case initiation reports have not been prepared in many cases OCRS has had no formal way of evaluating fully the strike forces' utilization of resources. In the absence of a formal evaluation system, strike force attorneys-in-charge were employing various informal procedures to assess their operations. The following statements are indicative of the opinions expressed at each strike force reviewed regarding the evaluation of strike force efforts.

--To measure the strike force's effectiveness in reducing organized criminal activity requires one to view the strike force as a long term venture with corresponding long range goals. Periodically, the attorney-in-charge compares these goals with actual performance and subjectively evaluates the strike force's effectiveness. The ultimate goal is to prosecute the highest ranking organized crime member possible. Publicity surrounding successful prosecutions of major cases also is a reflection of a strike force's effectiveness and conveys a message to the criminal element.

--There are three main factors for evaluating a strike force's effectiveness. First, the types of cases being prosecuted and the types of investigations involved must be analyzed to see if they are within the guidelines set down by NOCPC and what impact they will have on organized crime operations. Second, a determination has to be made of how well the agencies work together and coordinate their efforts, that is, a determination of how resources of the individual agencies are being channeled in terms of priorities and importance. This can be seen in the quality of the cases brought to the strike force. A third measure pertains to the relationship of the strike force with the U.S. attorney.

--Evaluations must rely on qualitative assessments of the strike force staff and the perceptions of investigative agencies on the strike force's impact on the organized crime element. Some of the factors to look at could be the street activities occurring after successful prosecution, and the number of LCN members brought to prosecution compared with the number of LCN members in an area.

--Effectiveness is based upon convictions in the priority areas. Also, the number of people placed in jail, the value of assets seized, and the civil suits brought by the strike force are considered.

--The numbers and types of convictions and sentences are the best measures of impact on organized crime because they are the end result of the strike force's work.

--Effectiveness is mainly a "gut" reaction based on the crime rate, what the newspapers say, and what the wiretaps indicate in terms of

pressure on organized crime figures, economic effect on the LCN, number of convictions of high level LCN, and the volume of illegal property/money recovered.

Generally, attorneys favored a qualitative rather than quantitative approach to evaluate effectiveness. The OCRS chief told us that a basic problem in the evaluation process is the fact that there is no established or definitive "bottom line," or definite determination of what the organized crime problem is. It is difficult to measure success in eradicating a problem when the extent of the problem is unknown. There is no baseline data for comparison purposes or to use in developing trends. Defining what the organized crime problem is in a particular city is further complicated by the fact that organized crime does not mean the same thing in each city.

Recognizing the deficiency in its program, Justice is in the process of developing an evaluation system. Under this system, an evaluation is to be performed on a recurring basis and integrated into the NOCPC visitations to each strike force. The system will consist of three basic elements. First, the organized crime problem in an area must be identified. Second, the impact cases have had on the organized criminal activity must be determined. Third, data must be collected in a systematic fashion so that trends can be determined over time. In addition, the resources devoted to fighting organized crime by each investigative agency during the past years will be determined and the major goals and strategies of the strike force will be identified. To date, there have been no measurable criteria established to distinguish "good" strike force cases from "bad" ones, and as a result, consideration is being given to adopting a ranking of organized crime figures and activities to provide a form of measurement. The system was tested in September 1980, in the Buffalo strike force, and the results were being evaluated as of February 1981.

To date, Justice and the strike forces have used informal and subjective ways to measure strike force effectiveness in combating organized criminal activity. In the absence of a formal evaluation system neither Justice nor the strike forces can demonstrate on an overall basis the extent to which the strike forces have been successful in reducing organized criminal activities. Without this ability, it would seem reasonable that Justice would experience difficulty in pinpointing what changes, if any, are needed to improve the Federal program to combat organized crime.

The proposed evaluation system being tested by Justice is a promising system that should be completed and implemented as soon as possible. The data obtained can help Justice determine how

effective each strike force has been and what changes are needed to help improve its program.

CONCLUSIONS

Improvements made by Justice to better plan, organize, and direct Federal efforts against organized crime have resulted in the strike forces obtaining indictments against and prosecuting high-level organized crime figures. The establishment of NOCPC, the setting of broad priorities and targets, the use of case initiation reports, and efforts to develop an evaluation system are steps in the right direction.

Although these efforts have improved, strike force operations, more needs to be done. Justice must improve the focus and direction of the program by establishing executive committees in each strike force and by ensuring that law enforcement agencies actively participate in the workings of these committees. Strike forces can use these committees as a means to develop a coordinated approach to reviewing and analyzing investigative activities of law enforcement agencies and to develop specific priorities and targets to break up organized crime. Without executive committees there is no means to develop a coordinated approach to reviewing and analyzing each agency's activities and as a result investigative resources will continue to be spent on cases that never reach prosecution.

Closed organized crime cases prosecuted by the strike forces showed that strike forces were accepting cases which could have been transferred to the U.S. Attorneys' Offices. These cases were not of a caliber to warrant the expenditure of strike force resources. Although these cases may have warranted prosecution, such action should not have been taken by a unit charged with the responsibility of handling only those cases requiring the extensive utilization of significant resources.

OCRS cannot be assured that strike forces are developing and prosecuting cases within Justice's priority areas. During our review of strike force activities, Justice was able to locate case initiation reports for only 33 percent of the cases prosecuted by the four strike forces. Case initiation reports are a necessity if OCRS hopes to properly manage the program and keep fully aware of what kinds of cases are being accepted for prosecution and whether or not they meet established Justice priorities. The OCRS chief told us that the report process was currently being followed.

Justice does not have a formal system for measuring the effectiveness of the program or the impact that strike forces are having on the organized crime problem. Recognizing this, Justice

has developed an evaluation system which is presently being tested. The data obtained from such an evaluation system will help Justice determine the management changes needed to continually improve its fight against organized crime.

RECOMMENDATIONS TO THE ATTORNEY GENERAL

We recommend that the Attorney General in order to improve the focus, direction, and management of the program to combat organized crime:

- --Establish an executive committee in each strike force.
- --Ensure that all Federal law enforcement agencies participating in the program to fight organized crime actively participate in the functions of the executive committees.
- --Require that all cases not involving organized crime figures or utilization of extensive investigative resources be transferred to U.S. Attorney's Offices for prosecution rather than using the limited resources of the strike forces to prosecute these cases.
- --Emphasize that case initiation reports be prepared for all organized crime cases. This will provide a means to ensure that (1) strike forces' resources are applied only to cases involving organized crime figures or utilization of extensive investigative resources and (2) cases are transferred to U.S. Attorney's Offices when appropriate.
- --Ensure that an evaluation system is developed that will measure the performance and accomplishments of the strike forces so that management improvements can be made where appropriate.

CHAPTER 3

THE RICO STATUTE--EMERGING CASE LAW REVEALS IMPEDIMENTS THAT REQUIRE LEGISLATIVE ACTION

The full potential of the RICO statute in the fight against organized crime has not been realized. While the statute has been used to obtain significant sentences for some convicted defendants, there have been few asset forfeitures in organized crime cases. Emerging case law points to ambiguities and omissions in the statute that limit its effectiveness. Problems of major concern that warrant legislative action are:

--whether the forfeiture provisions of RICO should be read narrowly to cover only "interests" in an enterprise, thus preventing the Federal Government from reaching proceeds or money obtained from illegal activities; and

--the inability of the Government to force forfeiture of substitute assets of the defendant when ill-gotten gains are transferred to third parties or are otherwise dissipated.

In addition, forfeiture investigations could be enhanced by more extensive use of Internal Revenue Service expertise than is currently the practice and by amending the 1976 Tax Reform Act.

RICO AND WHAT IT CAN ACCOMPLISH

The Organized Crime Control Act was enacted on October 15, 1970, (Public Law 91-452). One of the most important sections of the Act is Title IX, dealing with Racketeer Influenced and Corrupt Organizations (18 U.S.C. 1961-1968), commonly referred to as the

RICO statute. 1/ Prior to the enactment of this statute, no criminal law existed which allowed the law enforcement community to attack the continued economic viability of criminal organizations engaged in economic activity or patterns of criminal activity. This is because, historically, criminal law was narrowly drawn and narrowly interpreted to reach specific types of individual conduct, as opposed to reaching a criminal organization engaged in a variety of criminal activities. The statute is designed to strike at the acquisition of power and profit by organized crime.

The statute contains remedial and punitive schemes to accomplish this objective. The essential design of RICO is to incapacitate those engaged in racketeering ventures, and to provide the tools necessary to destroy organized crime's economic base. The penalties and remedies available under this statute are severe and consist of both civil and criminal sanctions. Civil remedies include divestiture, dissolution, or reorganization, other forms of injunctive relief, and treble damages to parties injured under violations of 18 U.S.C. 1962. The criminal penalties include fines up to $25,000 and imprisonment for as long as 20 years for each charge under RICO. Although fines are common sanctions for criminal violations, the maximum fine and imprisonment available under RICO is somewhat higher than that for most Federal offenses. Another feature of RICO's criminal sanctions is the provision for the criminal forfeiture of

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1/Section 1962 of title 18 prohibits four types of activities. Section 1962(a) prohibits a person from investing income derived from a pattern of racketeering activity or proceeds of such income in any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. Section 1962(b) prohibits the acquisition or maintenance of any interest in any enterprise through a pattern of racketeering activity. Section 1962(c) prohibits participation in an enterprise through a pattern of racketeering activity and also (d) prohibits a conspiracy to violate any of the three subsections.

All four section 1962 offenses contain both the elements of an "enterprise" and a "pattern of racketeering activity." An enterprise includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity (18 U.S.C. 1961). A pattern of racketeering activity is defined as at least two acts of racketeering activity occurring within certain time frames (18 U.S.C. 1961 (5)). The prohibited activities constituting racketeering activity consist of a variety of State and Federal crimes already on the books (18 U.S.C. 1961).

interests acquired or maintained in violation of RICO. RICO provides that upon conviction the defendant shall forfeit to the U.S. (1) any interest acquired or maintained in violation of RICO and (2) any interest in any enterprise that the defendant participated in, set up, or controlled in violation of RICO. Justice and law enforcement officials believe these provisions make RICO one of the Government's most powerful tools for combating organized crime.

RICO SENTENCING RESULTS IN MORE SIGNIFICANT PRISON TERMS

Even though the RICO statute is seen as a tool by which prosecutors may remove the financial profit from organized crime, this is not its only purpose. The significant sentences that accompany RICO violations also, according to a Justice official, "take the profit out of crime because it is a cost to the criminal." Nationwide analysis of organized crime RICO prosecutions revealed that significant prison sentences result from convictions under the statute.

From October 1, 1977, through December 31, 1979, 50 organized crime cases were prosecuted under the RICO statute--45 by strike forces and 5 by U.S. attorneys--involving 266 defendants. Sixteen of the strike force cases, involving 62 defendants, occurred in the cities of the four strike forces we visited.

Of the 266 defendants, 116 were convicted under the RICO statute. Of the 116 convictions, 86 individuals received sentences of more than 2 years in prison. In addition, the value of this statute in obtaining stiffer sentences for individuals convicted of organized crime is even better demonstrated when one identifies the sentences given to the principal defendants. This figure is more meaningful because it is possible in RICO cases to have a number of defendants who are all charged with RICO violations but who have varying degrees of involvement in the criminal activity. Our analysis showed there were 48 principal defendants convicted of RICO violations of which 45 received prison sentences of 2 years or more. In fact, the majority--about 60 percent--received more than 5 years imprisonment. The following chart demonstrates this fact.

	Number of defendants convicted	Number of principal defendants convicted
No prison time	15	1
Prison time:		
6 months or less	6	1
More than 6 months but less than or equal to 1 year	2	0
More than 1 year but less than or equal to 2 years	7	1
More than 2 years but less than or equal to 5 years	31	13
More than 5 years but less than or equal to 10 years	30	19
More than 10 years but less than or equal to 20 years	21	10
More than 20 years	4	3
Total	116	48

Nevertheless. law enforcement officials realize that even if prison time is a cost, it is not great enough to dismantle the criminal organization without the economic base being attacked. But emerging case law shows that the RICO statute contains serious shortcomings that should be overcome if law enforcement efforts against organized crime are to be strengthened.

EMERGING RICO CASE LAW REVEALS IMPEDIMENTS THAT REQUIRE LEGISLATIVE ACTION

The Department of Justice has prosecuted successfully a number of organized crime RICO cases. However, emerging case law reveals certain limitations on the use of the statute by prosecutors. These include restrictions on the use of the criminal forfeiture provisions to reach assets and proceeds other than "interests" in an enterprise and the inability of the Government

to reach so-called "clean" assets of the defendants; and to reach ill-gotten proceeds and assets when they are later transferred to third parties or are otherwise dissipated. Congress needs to strengthen certain aspects of the RICO statute to remedy these problems.

Forfeiture provisions narrowly interpreted by the courts

The scope of RICO's criminal forfeiture provisions is another unresolved issue. This problem is severe. Of the 50 organized crime cases prosecuted under the RICO statute only six included a forfeiture. In these six, approximately $7 million ($6 million interest in a pornography business, $350,000 in fire insurance proceeds, and $450,000 interest in a tavern), five union offices, and four additional interests in businesses were ordered forfeited by district court decisions. However, only one union office and two interests in businesses worth $340,000 have actually been forfeited. The decisions in the remaining cases were stayed pending appeal. These figures appear insignificant, especially when compared to a statement by a Justice official on July 24, 1980, before the Subcommittee on Criminal Justice of the Senate Judiciary Committee, that in the last 5 years there had been no LCN organizations eliminated through prosecution (using sentencing or forfeiture remedies).

The RICO statute speaks in terms of forfeiting "interests" in an enterprise. Several circuit courts have ruled that profits generated by a RICO violation and held in a nonstock capacity by the defendant do not qualify as an interest in an enterprise and thus are not subject to forfeiture. These circuit courts (the Second, Third, Fourth, Fifth, and Ninth) hold that assets forfeitable under RICO extend only to actual holdings of the defendants in corporate-like entities (e.g., partnership interest, stock, debt, or claim ownership). As a general proposition, profits or distributed returns on investments are not forfeitable under this view. Corporately distributed profits, dividends, nonstock purchases made with dividends received on the sale of stock and the like would therefore be immune from forfeiture. 1/

1/One Circuit Court (Fourth) suggests that corporate stock also is immune from forfeiture unless the corporation in which the defendant's stock is invested is itself illicit or used and conducted in violation of law. To the extent that this may be a proper interpretation of RICO, it implies that, for purposes of forfeiture, illicitly acquired assets can be "cleansed" upon investment in a wholly legitimate corporation.

The analytical basis for these decisions is that the "interests" forfeitable under the RICO statute are limited strictly to the defendant's interests in an enterprise; these decisions thus reject the notion that all assets traceable to an ill-gotten gain are forfeitable. Circuit courts holding this view point to RICO's legislative history to show that forfeiture, together with a combination of other criminal and civil sanctions, was designed to rid commercial enterprises of organized crime. When, for example, a racketeer receives cash in exchange for stock or other proprietary holding, the "interest" in the enterprise ceases to exist and forfeiture can no longer serve a useful purpose within the framework of RICO's legislative scheme. Circuit courts also have noted that the RICO statute does not provide explicit coverage of profits.

Reasoning that retention of ill-gotten gains provides the racketeer with a source of potential control or influence over an enterprise, Justice has argued, to date unsuccessfully, that all interests acquired in violation of RICO are forfeitable, regardless of whether the assets involved are technically interests in an enterprise or interests derived from the enterprise.

A related point of controversy is whether the RICO statute can reach any of a defendant's ill-gotten gains when the enterprise consists solely of a combination of individuals associated in fact. The RICO statute authorizes forfeiture of "interests" in the enterprise, but a de facto association lacks the attributes of a corporate entity, and hence is not capable of owning, purchasing, holding, or transferring any property in its own right. This raises the troublesome issue of whether there exists any "interest" in a de facto association/enterprise that could be forfeited under RICO. If there is not, the assets of individuals who comprise the de facto association are not susceptible to forfeiture under the RICO statute.

To strengthen and expand the coverage of RICO's criminal forfeiture provisions we believe the Congress needs to amend the statute to:

--make explicit provision for the forfeiture of profits and proceeds; and

--clarify that interests forfeitable under RICO include illicitly derived assets, held in an individual capacity by defendants convicted of using an association in fact type enterprise to violate RICO.

Preconviction transfer of ill-gotten gains limits forfeiture

Another problem relates to the uncertain status of assets that would otherwise be subject to forfeiture but which, for any

of a variety of reasons, are transferred to a third party or dissipated before forfeiture can be accomplished.

These transfers could occur in the following ways. One is for the property to be transferred to a third party with or without consideration. 1/ The difficulty with transfers of this type is that a criminal trial under the RICO statute determines the guilt or innocence of the defendant and, by implication, the defendant's rights in the property. Once the property is transferred, there are serious conceptual and legal difficulties in requiring the defendant to forfeit property no longer held or, alternatively, in requiring third parties to forfeit property without a trial. A second type of transfer occurs when a defendant places ill-gotten gains in foreign depositories beyond the jurisdiction of the United States yet retains so-called "clean" money in domestic depositories and domestic investments. The RICO statute does not make explicit provision for forfeiture of "clean" assets in substitution for illicit assets, the latter being beyond the reach of the Federal Government.

Preconviction transfers of assets raise two fundamental legal questions. The first is whether the Government may seek forfeiture of "clean" assets once a transfer has occurred. The second is whether transferred assets in the hands of a third party are forfeitable. There is very little case law on either issue.

The RICO statute clearly requires that a connection exist between the property to be forfeited and the offense for which the defendant is convicted. Where cash obtained from an illegal activity is concerned, it is even more difficult to prove a connection and trace the money's origin. The statute does not contain language, expressly or by clear implication, that authorizes the substitution of so-called "clean" assets. This accounts for the Department's view that remedial legislation would be necessary before substitute assets could be considered forfeitable.

The legal status of assets in the possession of a transferee is considerably more confused. Justice has argued that property becomes tainted at the moment it is connected with or generated by an illegal activity. Reasoning that the RICO statute explicitly directs the Attorney General to make "due provision for

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1/One way for a transfer to occur "for consideration" is for the recipient to pay the defendant a mutually agreed upon price for the property. One way for a transfer to occur "without consideration" is for the defendant to transfer property to a third party without requiring payment in return for the exchange.

the rights of innocent persons," Justice suggests that a third party transferee's recourse is to petition the Justice Department for mitigation/remission after he/she has forfeited his/her assets. This theory was rejected in United States v. Thevis, 474 F. Supp. 134, 145 (N.D.Ga. 1979), at least as it might apply to unindicted transferees who receive the property prior to indictment of the defendant. The result in a second case, United States v. Mannion, 79 Cr. 744 (S.D.N.Y. decided April 21, 1980), suggests the taint theory might be viable when applied to transferees who are merely holding the property as nominees of the defendant or who receive the property with constructive notice (presumably by indictment or restraining order) of its forfeitable status.

Beyond situations of this type, neither case law nor the forfeiture statutes provide clear guidance on criminal forfeiture of transferred assets. We know of no reported case, civil or criminal, where it has been successfully argued to obtain forfeiture of direct or derivative proceeds transferred to another party. We might also point out that the defendant in a criminal forfeiture case forfeits nothing until he has been tried and found guilty. Justice recognizes that the ultimate effectiveness of forfeiture under the RICO statute may well depend on the judiciary's acceptance of the theory that third parties could be called upon to forfeit assets, possibly made illicit without their knowledge, in the absence of a trial and without an adjudication of personal guilt.

Another problem is the untraceable disbursement or dissipation of assets that occurs in organized crime cases. Justice officials told us that most organized crime cases involve "enterprises" that consist of a "group of individuals associated in fact" which have no apparent forfeitable interest except income from whatever illegal activity they are engaged in. It is difficult to forfeit this income because it is usually disbursed in an untraceable fashion or it is difficult to trace its flow into a legitimate business or other assets.

Under present law, defendants can attempt to avoid forfeiture simply by transferring ownership to relatives or associates prior to indictment. Unless the Government can substitute so-called "clean" assets of the defendant or cause forfeiture of illicit assets transferred to third parties many crimes dealing only in cash, which is commonplace with organized crime, will be immune to criminal forfeiture.

The defendant's ability to transfer assets before and after conviction may undermine the value of criminal forfeiture in the organized crime RICO forfeiture context. We believe RICO should be amended to authorize forfeiture of substitute assets of the defendant to the extent that assets forfeitable under RICO: (1) cannot be located; (2) have been transferred or sold to, or

deposited with third parties; or (3) placed beyond the general territorial jurisdiction of the United States. This authorization would be limited to the value of the assets described in (1), (2), and (3), above.

Justice officials believe improvements in investigations would aid forfeitures

Justice officials believe that RICO financial-forfeiture investigations could be improved. These officials realize that a prompt and thorough financial investigation is necessary in criminal forfeiture cases and without such an investigation few cases will result in significant forfeitures.

To conduct a RICO financial investigation law enforcement agencies need specially trained agents. The two agencies most frequently involved in this type of investigation are DEA and FBI. Yet both agencies claim to have different capabilities. In hearings before the Permanent Senate Subcommittee on Investigations, on December 7, 1979, the Administrator of DEA acknowledged that his agency is not in the same league as IRS in terms of financial expertise and financial information. In fact, he signed a joint agreement on February 11, 1980, with IRS for limited support in this area. On the other hand, FBI headquarters officials told us that they have special agents with financial backgrounds to conduct such investigations and make every effort to seek forfeiture when appropriate. In addition, Justice officials told us that traditional investigative techniques, such as surveillance, wiretaps, and informants, are sometimes more important in organized crime cases involving the tracing of finances than extensive accounting backgrounds due to the lack of records that create a "paper trail."

Regardless of the training of FBI or DEA agents, Justice officials said that if at all possible IRS should be brought into the investigation in order to utilize its expertise in the financial area. These officials said that while some prosecutors have obtained useful information from IRS, many others have been reluctant to do so because of the extensive procedural mechanism established under the Tax Reform Act of 1976. Obtaining either tax information or approval for joint tax/nontax grand jury investigations from the IRS has been time consuming. However, IRS has recently simplified and streamlined both procedures. As a result, Justice officials believe the amount of time and effort to obtain tax information and the authorization to have a joint grand jury investigation has been reduced. Justice now recommends that the expedited tax information disclosure procedure be utilized in virtually all cases involving forfeiture.

Beyond the actions already taken, we believe that forfeiture investigations could be enhanced by more extensive use of IRS expertise than is currently the practice and by amending the 1976 Tax Reform Act.

We agree with Justice officials that if at all possible investigators and prosecutors should bring IRS into RICO financial-forfeiture investigations. The IRS role may be as simple as providing tax records requested by other agencies or something more such as analysis and investigation. In addition, we support the removal of the enormous procedural barriers that the 1976 Tax Reform Act places between agents of IRS and other law enforcement agencies which hinder communication and cooperation.

ADMINISTRATIVE IMPROVEMENTS HAVE BEEN MADE BY THE CRIMINAL DIVISION REGARDING CONTROLS OVER THE USE OF RICO

As a result of a recent internal study, the Criminal Division, in the fall of 1980 changed its procedures for approving RICO prosecutions. Under the former system the Criminal Division was responsible for approving RICO prosecutions but elected to delegate the responsibility among three of its sections--Organized Crime and Racketeering, Narcotics and Dangerous Drugs, and Public Integrity. As a result no one section was totally responsible for all prosecutive decisions although it was customary but not mandatory to forward prosecutive memorandums and draft indictments to OCRS for its technical comments. However, some RICO cases were indicted without OCRS's knowledge.

Under the new procedures, OCRS is responsible for approving all RICO prosecutions and Justice's Criminal Division has published guidelines for Federal prosecutors concerning the use of the statute. The guidelines are designed to ensure that only quality cases are prosecuted under the RICO statute and contain a significant requirement--U.S. attorney and strike force prosecutors must now explain in the prosecutive memorandum the reasons why forfeiture attempts were or were not attempted in RICO cases.

RICO case law results from both organized crime and nonorganized crime prosecutions. Therefore, under the former procedures a nonorganized crime RICO case approved by a section other than OCRS could result in a court decision detrimental to future organized crime RICO prosecutions. Under the new procedures this problem should be avoided. A Justice official told us that a single approval point allows the Department to make conscious policy decisions to prosecute certain cases and ensure better control over the prolific use of the RICO statute. This new procedure is a step in the right direction for improving departmental control over RICO cases and prosecutions.

Procedures for pursuing forfeiture are unclear

Certain procedures for pursuing criminal forfeiture must be followed. The Federal Rules of Criminal Procedure were amended in 1970 to provide for the inclusion of a forfeiture count in the

indictment and the return of a special jury verdict on such count. 1/ If the indictment does not contain a forfeiture count, criminal forfeiture automatically ceases to be an available remedy. Once an indictment is obtained, RICO authorizes the court where the action is pending to issue a restraining order prohibiting the transfer of assets subject to forfeiture, require a performance bond, or take such other action as it may consider appropriate.

Beyond these basic procedures, the Congress did not specifically address the issues of obtaining control of property, taking care of it, settling the rights of third parties, and selling the property. In the RICO statute, Congress simply provided that customs law procedures should be followed "insofar as applicable and not inconsistent with the provisions [of RICO]."

One strike force attorney-in-charge told us that the forfeiture provisions of the statute give no guidance as to how a forfeiture should occur. The procedures to be followed are left to the discretion of the court. The lack of procedures has given rise to considerable uncertainty for the courts and prosecutors alike in trying to carry out criminal forfeitures. Justice officials have told us that they have not been able to devise a definitive policy regarding the collection and disposition of forfeited assets. Also, customs law procedures are difficult to apply in the context of criminal forfeiture for the following reasons.

First, customs procedures were intended to cover civil forfeiture in rem, where it is the use, origin, or character of the property that is at issue--not the guilt of the property holder. The due process procedures for handling a civil forfeiture in rem are not as stringent as those required for criminal forfeiture.

Second, customs law procedures are tailored to forfeitures involving tangible objects--automobiles, jewelry, and the like--and offer almost no guidance regarding the procedures for disposing of a corporation, stock, or other proprietary holding, the latter being more likely objects of forfeiture under RICO.

And third, the innocence of third party transferees is largely irrelevant for purposes of civil forfeiture, which is the type of forfeiture customs law procedures were designed for. Consequently, customs law procedures deal with third parties as

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1/See Federal Rules of Criminal Procedure, Rule 7(c) (2), 31 (e), 32 (b)(2). The Federal Rules of Criminal Procedure are standard rules that govern the conduct of all criminal proceedings in Federal court.

if they had already forfeited assets, not in terms of asset forfeitability. However, the status of third parties is a hotly contested issue in criminal forfeiture.

Justice is aware of these problems and recognizes that there are no reported cases to which one can look for guidance. However, the reason for the lack of cases is not because there is little concern over the procedures to be followed but because so few RICO forfeiture cases have been prosecuted so far. Justice's advice to attorneys is to "devise procedures on a case by case basis, using the customs law procedures as a guide or analogy but adapting them to the different circumstances of a RICO case." A Criminal Division attorney within the Collection Unit, told us that it is difficult to develop a definitive policy due to the diverse property involved in a criminal forfeiture. Because of this diversity there are no all encompassing guidelines; therefore, forfeitures are handled on a case-by-case basis. As experience is acquired with RICO, there may well be a demonstrable need for prescribing uniform and comprehensive forfeiture procedures either legislatively or administratively.

CONCLUSIONS

At first glance, the RICO statute may appear to be easily understood because by its title and statement of purpose it merely prohibits the infiltration of legitimate enterprise by organized crime. However, RICO introduces concepts not commonly encountered in criminal law, such as "enterprise," but then does not define these terms with specificity.

The courts have found it necessary to define the statute's scope, interpret several ambiguous and broadly defined statutory terms--such as enterprise and pattern of racketeering activity--and formulate rules on a case-by-case basis for the various relationships that must exist among the defendants, criminal activities, and enterprises as prerequisites for a successful RICO prosecution. What has emerged is a variety of interpretations and tests, which are sometimes inconsistent among jurisdictions.

Consequently, whether a defendant and the type of criminal activity in which he/she is engaged can be successfully prosecuted may depend, in part, on the particular court in which the case is brought. In some cases, decisions by prosecutors to even attempt a RICO prosecution may be affected not only by the strength of the case but also by the jurisdiction in which the case will be brought. In addition, practical difficulties such as requirements for tracing assets, asset transfers, and the lack of specific procedures may discourage greater use of forfeiture authorizations.

In a prior GAO report 1/, dealing with asset forfeitures in combatting drug trafficking, we addressed the need for the Congress to make legislative changes to improve the use of the RICO statute. 2/ Our prior recommendations to the Congress follow, and we believe they are applicable to addressing the problems identified in this report.

--Make explicit provision for the forfeiture of any profits and proceeds that are (1) acquired, derived, used, or maintained in violation of the RICO statute; or (2) acquired or derived as a result of a RICO violation.

--Clarify that "interests" forfeitable under RICO include assets illicitly derived, maintained, or acquired that are held or owned in an individual capacity by a member of a de facto association/ enterprise convicted of violating the RICO statute.

--Authorize forfeiture of substitute assets but only to the extent that assets forfeitable under RICO: (1) cannot be located; (2) have been transferred or sold to, or deposited with third parties; or (3) placed beyond the general territorial jurisdiction of the United States. This authorization would be limited to the value of the assets described in (1), (2), and (3) above.

RICO forfeiture investigations may be aided by more extensive use of IRS expertise than is currently the practice due to procedural provisions in the 1976 Tax Reform Act. While IRS financial expertise may not always be essential to such an investigation, law enforcement officials agree that closer cooperation would be helpful.

In another prior GAO report 3/, dealing with the disclosure and summons provisions of the 1976 Tax Reform Act, we addressed the need for the Congress to make legislative changes to improve the use of the act. We believe our prior recommendations to the

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1/"Asset Forfeiture--A Seldom Used Tool In Combatting Drug Trafficking" (GGD-81-51, Apr. 10, 1981).

2/These issues were included in Senate bill S. 1126 introduced on May 6, 1981 (Criminal Forfeiture Amendments Act of 1981).

3/"Disclosure and Summons Provisions of the 1976 Tax Reform Act--An Analysis of Proposed Legislative Changes" (GGD-80-76, June 17, 1980).

Congress are applicable to addressing the problems identified in this report.

Placing responsibility for approving prosecutions of RICO cases in one place--OCRS--and other administrative improvements should strengthen Justice's control over the use of the statute.

Cases are being brought continually to Federal district and circuit courts which deal with the issues discussed in this chapter. Eventually many of the issues may be resolved through the appeals process. However, we cannot forecast how long this will take, nor how the issues will be resolved. The results may be different than what the Congress intended when it enacted the RICO statute over 10 years ago. Therefore, the Congress should address these potential problems through amending the statute.

CHAPTER 4

SENTENCES GIVEN TO INDIVIDUALS CONVICTED IN ORGANIZED CRIME CASES

The final outcomes of Federal efforts against organized crime are the indictment, conviction, and imprisonment of those who perpetrate these crimes. However, as a result of the efforts of the four strike forces we visited, only 22 percent or 61 of the 273 defendants convicted and sentenced received sentences over 2 years.

ANALYSIS OF INDICTMENTS, CONVICTIONS, SENTENCES, AND PAROLE DECISIONS

From October 1, 1977, through December 31, 1979, the four strike forces reviewed closed 180 organized crime cases involving 416 defendants. Of these 416 defendants, 273 received sentences. Of the 273 persons sentenced:

--61 (22 percent) received sentences of over 2 years,

--90 (33 percent) received sentences of 2 years or less, and

--122 (45 percent) were fined or placed on probation and received no prison sentence.

Indictments and disposition of defendants

During fiscal years 1978 and 1979, and the first quarter of fiscal year 1980, the four strike forces reviewed obtained indictments against 416 individuals. (Detailed information on the offenses which resulted in indictments appears in app. III.) The disposition of these individuals as of December 31, 1979, follows.

Disposition or status	Strike forces				
	Brooklyn	Chicago	Los Angeles	Philadelphia	Total
Pled guilty or no contest (note a)	78	36	15	62	191
Convicted after trial	31	33	12	8	84
Acquitted	9	6	13	8	36
Dismissed or prosecutive decision not to proceed with case (note b)	16	7	17	11	51
Convicted - appeal pending	8	2	15	12	37
Awaiting trial	-	15	2	-	c/17
Total	142	99	74	101	416

a/Nolo contendere

b/Nolle prosequi

c/Other defendants associated with the 17 defendants were prosecuted. Because the agency considered a portion of the case closed, we included it in our universe.

Sentences imposed

Of the 275 defendants who pled guilty, no contest, or were convicted as of December 31, 1979,

--151 (55 percent) received prison sentences (90 or 33 percent were sentenced to 2 years or less),

--122 (45 percent) were fined or placed on probation and received no prison sentences, and

--2 had not been sentenced as of December 31, 1979.

The following table shows, by strike force, the type and frequency of sentences imposed.

	Strike Force									
	Brooklyn		Chicago		Los Angeles		Philadelphia		Total	
	Defendants	Percent of total (note a)	Defendants	Percent of total (note a)	Defendants	Percent of total (note a)	Defendants	Percent of total (note a)	Defendants	Percent of total (note a)
Prison time:										
6 months or less	24	22	9	13	0	0	7	10	40	15
More than 6 months but less than or equal to 1 year	3	3	11	16	1	4	7	10	22	8
More than 1 year but less than or equal to 2 years	10	9	8	12	4	15	6	9	28	10
More than 2 years but less than or equal to 5 years	13	12	14	20	8	30	7	10	42	15
More than 5 years	5	5	7	10	2	7	5	7	19	7
Total	55	51	49	71	15	56	32	46	151	55
No prison time:										
Fine only: $1,000 or less	11	10	3	4	0	0	11	16	25	9
More than $1,000 but less than or equal to $2,000	2	2	0	0	0	0	0	0	2	1
More than $2,000 but less than or equal to $5,000	8	7	1	1	1	4	7	10	17	6
More than $5,000 but less than or equal to $10,000	7	7	1	1	1	4	2	3	11	4
More than $10,000	0	0	0	0	0	0	1	1	1	0
Probation:	24	22	15	22	10	37	17	24	66	25
Total	52	49	20	29	12	44	38	54	122	45
Total	107	100	69	100	27	100	70	100	b/273	100

a/Rounded to the nearest whole number.

b/Two defendants had not been sentenced as of December 31, 1979.

BEST DOCUMENT AVAILABLE

Parole decisions on organized crime cases

Our universe of strike force cases included 89 defendants eligible for parole because they had been sentenced to at least 12 months and 1 day in prison. Of these, we were able to find records that showed a parole decision 1/ had been made for 49. We were unable to collect information on the remaining 40 defendants because we could not locate a record of the defendants ever serving a Federal sentence or the Parole Commission ever making a decision on the case. There are several explanations for this. Some cases could still be on appeal while in other cases the convictions may have been overturned in the U.S. Circuit Court of Appeals. Other defendants could be in the Witness Security Program and thus be serving their sentences under different names. In addition, some offenders do not apply for parole consideration upon commitment to prison while others simply have not been scheduled for a parole hearing.

The range of actual sentences imposed upon the 49 defendants for whom parole decisions had been made and the time served or scheduled to be served follows.

Range of actual sentence imposed (months)	Months served or scheduled to be served	Number of defendants
12 -36	0 - 12	7
	13 - 24	14
	25 - 36	4
37 - 60	0 - 12	1
	13 - 24	5
	25 - 36	3
	37 - 60	1
61 and over	13 - 24	1
	25 - 36	3
	37 - 60	3
	61 - 72	2
	73 and over	5
Total		49

Of the 49 defendants serving prison sentences of at least 12 months and 1 day, 31 had been released from prison as of January 1981 and had only served between 8 and 36 months in prison.

1/A parole decision is the determination of how much time of the actual sentence imposed a defendant will have to serve in prison.

The length of a prison sentence imposed on a defendant does not always indicate the actual period of incarceration. In most cases, individuals are eligible for parole after serving one-third of their actual sentence. Thus, the actual time a defendant may stay in prison does not appear to be a very significant deterrent to continued criminal activity.

COMMENTS ON SENTENCES IMPOSED IN STRIKE FORCE CASES

Sentencing is an important yet controversial part of the criminal justice process, and we, therefore, obtained the views of strike force attorneys and law enforcement officials on the reasonableness of sentences imposed on defendants prosecuted by the strike forces.

According to these individuals, the sentences imposed were too light because

--the judiciary is too lenient;

--the crimes committed by these defendants are often victimless crimes involving services desired by people in the community, e.g. gambling, and prostitution; and

--the courts are not required to impose mandatory sentences.

In one strike force we visited, the attorney-in-charge said that the institution of mandatory prison sentences for specific crimes was needed. In his opinion, this innovation would give the judiciary less flexibility in sentencing convicted organized crime criminals, but it would also require close monitoring.

In another strike force visited, the attorney-in-charge said he was satisfied with some but not all of the sentences and fines imposed. He stated that sometimes sentences are insufficient in view of the violation because judges have mixed feelings about certain violations and are often too lenient.

Another strike force attorney-in-charge and a U.S. attorney stated that they have little or no influence at the time of sentencing. Even though a sentencing memorandum is prepared informing the court of the prosecutor's position and recommendations, the presiding judge ultimately determines the length of a prison sentence and/or the size of the fine.

CONCLUSIONS

Indictments were obtained against 416 individuals during fiscal years 1978 and 1979 and during the first quarter of fiscal year 1980 by the four strike forces visited. Of these, 273 defendants were convicted and sentenced as of December 31, 1979. Only 61 or 22 percent of these defendants received prison sentences over 2 years, while 90 or 33 percent received sentences of 2 years or less. In addition, another 122 defendants or 45 percent were fined or placed on probation and received no prison time.

In most cases defendants who are incarcerated are subject to a parole decision and may be released from prison after serving one-third of their sentence. Eighty-nine defendants were sentenced to at least 12 months and 1 day and for 49 of them a parole decision had been made. As a result of parole decisions, 31 defendants had been released from prison as of January 1981 and had only served between 8 and 36 months in prison. The Federal goal of disrupting organized crime will be difficult to accomplish under this pattern of sentencing and parole decisions.

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In commenting on our draft report, Justice said that in fiscal year 1981, defendants convicted by all strike forces have been sentenced to an average term of about 43 months. In addition, Justice said that 44 percent received sentences of 2 years or more, 30 percent were sentenced to less than 2 years, and 26 percent received probation.

CHAPTER 5

AGENCY COMMENTS AND OUR EVALUATION

The Departments of Justice and Treasury in commenting on our draft report agreed with most of the report's conclusions and recommendations. The Treasury Department said that the report is constructive and makes recommendations which will improve the fight against organized crime. It said that it agrees with the proposal to establish an executive committee in each strike force, agrees that all appropriate cases should be transferred to the U.S. Attorney's Office for prosecution rather than using the limited resources of the strike forces, and is working with the FBI on a memorandum of cooperation to ensure more extensive use of IRS expertise in the area of asset forfeiture and that it will support efforts to amend the Tax Reform Act of 1976, so that IRS can more easily provide information in nontax criminal matters under proper safeguards. Justice stated that it has already taken successful steps to implement several of the necessary changes. These steps include requirements to ensure compliance with the issuance of case initiation reports, the development of an evaluation system to measure the effectiveness of the program to fight organized crime, limiting the number of cases accepted for prosecution by strike force attorneys for training purposes, and, proposed legislative changes to the RICO statute. (See apps. IV and V.)

The Justice Department said that our report correctly notes that the system of case initiation reports was developed to permit OCRS to monitor potential prosecutions by the strike forces and to ensure that strike force resources were devoted to cases that address one or more of the priority areas. Justice said that it shares our view as to the importance of case initiation reports and since the period covered by the report has made concerted and successful efforts to ensure compliance with this requirement. To ensure compliance, OCRS has recently adopted two requirements:

--it will not authorize any indictment, including one charging a tax offense, unless it has previously approved a case initiation report for the underlying investigation, and

--all correspondence between the strike forces and OCRS headquarters concerning a case or an individual must include reference to the case initiation report.

The Justice Department said that these two requirements are intended to ensure that any failure to adhere to the case initiation report requirement will come immediately to the attention of OCRS. Justice believes, and we concur, that along with

continued emphasis on the importance of case initiation reports, these two requirements will solve any remaining problems associated with the preparation of these reports.

Justice said it believes strongly in the need for formal mechanisms to evaluate the effectiveness of the strike forces in combating organized crime. It stated that it has long shared our concern for the need to develop sophisticated methods of evaluation and is working in a number of areas to improve its ability to assess strike force performance. Justice stated that, as our report notes, it is now developing a review process to supplement the NOCPC visitations to each strike force. This process will involve a detailed study by trained policy analysts of the goals, efforts, and results of the work of a strike force. Justice said it believes that this will provide a sound predicate for assessing the quality of strike force performance and for identifying particular areas needing improvement. The Department also stated, that, like GAO, it believes that this system is "promising," and, subject to budgetary constraints, anticipates conducting two to three such strike force reviews each year.

In addition, Justice stated that OCRS is participating in a study underwritten by the National Institute of Justice that will explore different means of generating measures of effectiveness for use in evaluating law enforcement efforts against organized crime. Justice stated that this study will consider the general question of whether objective indicia can be applied successfully to measure the effectiveness of law enforcement on organized crime and will attempt to devise specific systems or measures of effectiveness. The Department's Criminal Division is committed to integrating the results of this study into the system of strike force evaluation now under development.

The Department also stated that through the use of the Criminal Division's recently implemented Case Management Information System, the OCRS has enhanced its ability to conduct what we describe in our report as "subjective evaluations." The case management system enables OCRS to constantly survey the caseload of each strike force. Although Justice agrees with us that this method of review does not yield any direct insight into the effectiveness of strike force activities on organized crime, it believes nevertheless that such a system is an essential technique to assure that OCRS resources are focused on important cases within the priority areas.

Justice added, however, that it did not want to underestimate the conceptual complexity and practical difficulties associated with developing formal evaluation mechanisms. The Department said that it has expended considerable time and effort over the last several years in studying the problem, and both the academic experts and the law enforcement professionals with whom Justice consulted agree that developing a method of measuring the impact

of law enforcement on organized crime presents unprecedented theoretical and practical challenges. As a result, the current study Justice has underway is attempting to determine whether any objective means to measurement has promise in this area. We concur with the Department's efforts and encourage it to develop an appropriate system so that the effectiveness of the fight against organized crime can be measured.

With regard to the handling of cases merely to train attorneys, Justice said that it now requires the attorneys assigned to strike forces to have completed a year with the Department and requires all attorney applicants to demonstrate substantial trial experience. Justice said these changes obviate the need to routinely accept uncomplicated cases for the purpose of training attorneys. We concur and compliment the Department with regard to this new strategy for staffing strike forces.

Justice stated that it shares our belief as to the importance of the RICO statute in fighting organized crime. It also agrees with us that the promulgation of RICO guidelines and centralization of the approval of the use of RICO in OCRS will help ensure the appropriate use of the statute and the positive development of case law. Justice agrees in principle with the need for legislative revision of the RICO statute and stated that we are correct in singling out the forfeiture provisions for change.

Justice believes, however, that amendment of RICO to reach proceeds or substitute assets is not sufficient and is in the process of proposing additional changes to the RICO statute. Thus, it is developing the type of comprehensive amendment it believes the statute requires. The Department agreed that the report correctly notes that it has not as yet developed a definitive policy regarding the collection and disposition of forfeited assets. Justice said too few cases have been decided to permit codification in this difficult and complicated area. Justice added that it wished to point out that strike forces have successfully used RICO forfeiture to remove corrupt union leaders from office and to eliminate the source of their influence. Justice states that although a monetary value cannot be assigned to such forfeitures, it believes, and we concur, that such forfeitures have nevertheless been of prime importance in pursuing the goal of purging legitimate organizations of corrupt influence.

The Department of Justice has taken exception to our recommendations in the areas of transferring strike force cases to U.S. Attorneys' Offices and establishing executive committees in each strike force. In addition, the Department believes that the focus of our report on cases closed between October 1, 1977, and

December 31, 1979, does not reflect the results of the important changes it has made since our earlier report. These areas of concern are discussed in detail in the following sections.

OVERALL FOCUS OF REPORT

The Department of Justice contends that the focus of our report on closed cases does not reflect the results of the important changes it has made in response to our earlier report or the effect of other innovations since 1978. The Department said that focusing attention on the results achieved during the last 2 years would place the organized crime problem, the strike force program, and the scope of potential improvement in a more complete and current perspective.

We disagree because our report on pages 7 through 13 presents the improvements the Department has made since our earlier report and also presents examples of cases in which the strike forces have successfully obtained indictments against and prosecutions of high level organized crime figures as much as a year after the case analysis period. Our report also discusses the development of management techniques, such as the establishment of NOCPC, the setting of broad priorities and targets, the use of case initiation reports, and the initial development of an evaluation system to measure the effectiveness of the organized crime program. Therefore, we disagree with the Department that the information presented in the report does not show the results of strike force efforts in a complete and current perspective. In fact, our report discusses improvements that have been made but also points out that additional improvements must be made to enhance the Federal effort to fight organized crime.

TRANSFER OF STRIKE FORCE CASES TO U.S. ATTORNEYS

Both the Treasury and Justice Departments agree that all appropriate cases should be transferred to the U.S. Attorneys' Office rather than using the limited resources of the strike forces. Justice, however, did not agree that strike forces were not transferring such cases to U.S. attorneys. Justice believes that many of the cases identified in our report as ones that should have been transferred were cases completely appropriate for the strike forces to handle.

Justice said that often a long and complex investigation will generate a number of spinoff cases which may be relatively uncomplicated legally. However, Justice added that these cases generally require familiarity with an imposing body of facts that a strike force attorney has already mastered and tremendous resources would have to be used to acquaint an assistant U.S. attorney with the case.

Our study showed that generally spinoff cases were not complex and did not involve organized crime figures or individuals closely associated with organized crime. In fact, we did not question strike force cases that were spinoffs from a related case against organized crime figures. The seven spinoff cases questioned in our report involved investigations into an organized crime activity which did not result in the prosecution of anyone associated with organized crime. Further, in two of the cases the OCRS officials agreed that they were not of the caliber that strike forces should undertake. It seems implausible that an assistant U.S. attorney could not handle cases that are relatively uncomplicated legally, regardless of the history of the original investigation. U.S. Attorneys' Offices have attorneys that are as qualified as strike force attorneys and, in those instances in which minor spinoff cases evolve from a complex investigation, we believe the U.S. Attorney's Office should make the decision as to whether it can handle the case. If the U.S. Attorney's Office can handle the case, then strike force attorneys can continue to devote their time to more complex cases and attorneys in the U.S. Attorney's Office will obtain valuable trial experience at no detrimental effect to the justice system. Additionally, the strike force attorney, being extremely knowledgeable of the case, should be able to determine if and when the U.S. Attorney's Office will be brought into a case.

Justice said that sometimes strike forces bring minor charges against an organized crime member or associate as part of a more elaborate strategy to obtain his cooperation or "flip" him into becoming a witness against important targets. Justice believes prosecution of these cases is appropriate and believes that the strike force attorney is in a far better position to demand complete information from a lower level criminal. However, Justice added that, where the potential of successfully flipping a witness is doubtful and the case would not otherwise be prosecuted federally, the proposed prosecution should be disapproved.

We agree with Justice that the strike force attorney is in a better position to understand the value and potential of the information that an individual might bring to bear against a higher level organized crime figure. However, we believe that Justice has missed the essence of our point, which is that once the strike force obtains the information it needs to prosecute a higher level individual, then it should concentrate its resources on the latter case and transfer the flip case to the U.S. Attorney's Office.

In addition, we believe that in situations where an individual will not flip but facts exist to indicate the commission of a Federal offense, the strike force, rather than declining prosecution, should transfer the case to U.S. Attorneys' Offices for a prosecutive decision. If this is not an established practice,

violators of Federal law could go unprosecuted. By transferring cases involving flipped defendants or those deemed by strike force attorneys as unlikely to flip, the strike force attorneys would be free to handle other higher level cases and allow the U.S. Attorneys' Offices to decide the potential for prosecution.

Justice said that occasionally strike forces prosecute cases that would ordinarily be handled by the U.S. attorney, when specifically directed by the Assistant Attorney General of the Criminal Division. It cited as an example the recent series of prosecutions of members of Congress. Justice said some of the cases identified in our report fall into this category. We agree with Justice that there may be occasions where the nature and complexity of a case would indicate that it would be more appropriate for the strike force to handle. However, we disagree with the Department's statement that some of the cases we identified fall into this category. In fact, only one of the cases we questioned fit this justification for strike forces handling the case. In this situation, the strike force was required to handle the case because there were allegations that the U.S. attorney had a conflict of interest with one of the defendants.

Justice said that in every case the assignment for prosecution is the product of a decision reached jointly by the U.S. attorney and the strike force chief. It added that sometimes, as in the cases identified in the draft report, the two agree that the strike force should prosecute the case. However, Justice said that at least as often cases are transferred to the U.S. Attorneys' Offices and the process is initiated when a case initiation report is prepared, reviewed, and discussed by both individuals. However, our review at the four strike forces showed that the prosecutive decisions were reached by the strike force chiefs and not jointly with the U.S. attorney. In fact, our review of 180 cases closed by the strike forces visited showed that none were transferred to a U.S. Attorney's Office for prosecutive action. In one office the assistant U.S. attorney told us that the decision to prosecute is left to the judgment of the strike force. With regard to the use of case initiation reports, we could find reports for only 33 percent of the cases and therefore it seems impractical that joint decisions between strike forces and U.S. attorneys could have been initiated as described by Justice. Further, case initiation reports are used to keep the U.S. Attorneys' Offices informed of strike force activities, not for the purposes of obtaining approval of the case: that decision is made by the chief of OCRS.

Justice concluded that it sees no reason to take steps to further encourage the transfer of cases from strike forces to U.S. Attorneys' Offices because it believes that most cases handled by strike forces were appropriate. However, as noted above, we believe strike forces are handling cases that would be

more appropriately handled by U.S. Attorneys' Offices and thus allow the strike forces with limited resources to concentrate on higher level cases. The Attorney General's guidelines state that strike forces should handle indepth investigations of the more sophisticated and farflung criminal enterprises engaged in by the higher echelons of syndicated crime while reducing competition with, and duplication of the work capable of being performed in U.S. Attorneys' Offices. The Attorney General's guidelines further require that where the potential charge does not and will not require extensive investigation or utilization of significant resources and facilities of the strike force that the matter be promptly transferred to the U.S. Attorney's Office and that the U.S. attorney keep the strike force informed as to the progress of the case. Because we have identified cases (see p. 17) that should have been transferred to U.S. Attorneys' Offices, we believe that there is room for improvement, and it is necessary for Justice to emphasize and further encourage the transfer of cases from the strike forces to U.S. Attorneys' Offices when appropriate.

ESTABLISHMENT OF
EXECUTIVE COMMITTEES

The Department of Treasury agreed with our recommendation on the need to establish an executive committee in each strike force. It agreed that such committees are a vehicle with which strike forces and law enforcement agencies can formulate plans and agree on priorities and targets to be investigated. Justice, on the other hand, does not believe that executive committees would improve cooperation and coordination. Justice stated that it has concluded on the basis of extensive experience that frequent formal conferences may impede cooperation and planning. It further stated that executive committees would not enhance agreement on plans and priorities.

We are at a loss to understand why Justice disagrees with the need and benefits to be derived from the establishment of executive committees when OCRS has recently recommended changes to the Attorney General's guidelines that would require that executive committees meet semiannually to review the progress of organized crime programs in the district and to address any problems of coordination and cooperation. Further, Treasury, a strike force member, believes in the benefits of these committees and believes such committees serve a useful purpose. On the basis of Justice's comments it seems that Justice is objecting more to the rigid frequency of executive committee meetings than to the concept of executive committees. We believe, therefore, that Justice should discuss the frequency of meetings with the agencies participating in the strike force program before it arbitrarily decides that the committees should meet only semiannually.

Justice said it cannot conclude on the basis of the data presented in the report that the number of cases closed administratively or declined for prosecution reflects an absence of

centralized planning or coordination, or that a substantial portion of the investigative resources are being expended on routine rather than priority cases. On pages 15 and 16 of our report, we showed that 85 percent of all investigations, classified as organized crime cases by the four law enforcement agencies reviewed, were closed administratively or declined for prosecution. As a result, we believe that one way to ensure that the law enforcement agencies concentrate their resources on priority and target cases geared to breaking up organized crime would be through the use of executive committees. The use of these committees would provide a vehicle to ensure a more coordinated approach to prioritizing investigations and establishing targets for all law enforcement agencies. This approach would also impact on the number of cases closed administratively and reduce the amount of resources devoted to cases that are not in agreement with the priorities established and ensure a more coordinated Federal attack on organized crime. By the strike forces and law enforcement agencies working together, the current fragmented attack on organized crime will become a more coordinated attack.

CHAPTER 6

SCOPE AND METHODOLOGY

Our review of Federal efforts to combat organized crime was requested by the Chairman, Subcommittee on Limitations of Contracted and Delegated Authority, Committee on the Judiciary, U.S. Senate.

SELECTION OF LOCATIONS

Because the FBI investigates approximately 55 percent of all organized crime cases prosecuted by the strike forces, we based our selection of strike force locations to be reviewed on those FBI field offices with the largest number of organized crime investigations. The FBI's Resource Management Reports show all organized crime investigations, including office of origin and auxiliary cases, performed by each field office. Our analysis of these reports for fiscal years 1978 and 1979 showed that the following FBI offices were among those with the greatest number of organized crime investigations.

	Fiscal year 1978	1979
Chicago	810	785
Los Angeles	1,016	998
New York	1,481	1,379
Philadelphia	801	787

We, therefore, performed work at the Brooklyn, Chicago, Los Angeles, and Philadelphia strike forces. We also performed work at the Washington, D.C., strike force, because it prosecutes and assists in reviewing proposed RICO cases from all strike forces and U.S. attorneys. In addition, we performed limited work at the Boston and Miami strike forces because of the organized crime activity in their geographical jurisdictions.

Selection of ATF, DEA, FBI and IRS as the law enforcement agencies to be reviewed at the strike force locations visited was based on the Chairman's request and the degree of involvement these agencies had in the strike force program.

In addition to performing work at the above-mentioned locations, we examined agency records and held discussions with Justice Department officials of the Criminal Division's Organized Crime and Racketeering Section and also talked with headquarters and regional officials of Federal agencies participating

in strike force activities and with the U.S. attorneys in the four cities visited.

WORK PERFORMED AT EACH AGENCY VISITED

Strike Forces

At the four strike forces reviewed in detail, we

--reviewed all strike force cases (180) closed during the period October 1, 1977, through December 31, 1979, and discussed each case with strike force attorneys. The number of cases closed, by strike force, were; Brooklyn (69); Chicago (44); Los Angeles (28); and Philadelphia (39);

--reviewed strike force policies and procedures and discussed numerous management questions on targeting, strategies, and cooperation between the strike force attorneys-in-charge and the U.S. attorneys; and

--spoke to strike force representatives from Customs Service, Department of Labor, Securities and Exchange Commission, FBI, Immigration and Naturalization Service, Secret Service, U.S. Marshals Service, U.S. Postal Service and IRS. We discussed their activities and roles as strike force representatives and their involvement in combating organized crime.

Bureau of Alcohol, Tobacco and Firearms

At each ATF office visited, we

--reviewed a minimum random sample of 27 cases closed during the period October 1, 1977, through December 31, 1979, and discussed them with case agents and/or supervisors;

--reviewed ATF policies and procedures for investigations and operations; and

--discussed numerous management questions concerning organized crime, ATF investigations and general ATF procedures with the special agents-in-charge, assistant special agents-in-charge, group supervisors and/or senior operations officers.

Drug Enforcement Administration

At each DEA office visited, we took the following actions:

--We reviewed a minimum random sample of 30 cases closed during the period October 1, 1977, through December 31, 1979, and discussed them with case agents and/or supervisors. The cases sampled consisted of Class 1 and Class 2 violators. 1/

--We reviewed DEA policies and procedures for investigations and operations.

--We discussed numerous management questions concerning organized crime, DEA investigations, and general DEA procedures with the special agents-in-charge, supervisors, and/or senior DEA officers.

Federal Bureau of Investigation

At each FBI field office visited, we took the following actions:

--We reviewed a random sample of 70 cases closed during the period October 1, 1977, through December 31, 1979, and discussed them with case agents and/or supervisors. The cases sampled consisted of 40 RICO and 30 non-RICO cases.

--We reviewed FBI policies and procedures for investigations and operations.

--We discussed numerous management questions concerning organized crime, FBI investigations, and general FBI procedures with the special agents-in-charge, assistant special agents-in-charge and/or the supervisors in charge of the organized crime squads.

Internal Revenue Service

At each IRS office visited, we took the following actions:

1/DEA classifies upper level narcotics traffickers into Class 1 and Class 2 violators. The key elements in determining the proper classification are the type and quantity of drugs involved. Most organized crime cases fall into these two categories.

--We reviewed a random sample of 30 cases closed during the period October 1, 1977, through December 31, 1979, and discussed them with case agents and/or supervisors. 1/

--We reviewed IRS policies and procedures for investigations and operations.

--We discussed numerous management questions concerning organized crime, IRS investigations, and general IRS procedures with the IRS Branch Chiefs and group managers.

Organized Crime and Racketeering Section

At OCRS, we

--reviewed policies and procedures for prosecutions and operations;

--reviewed case initiation reports, daily reports and significant activity reports;

--updated indictment and prosecution data developed at each strike force to include the period January 1980 through January 1981;

--reviewed indictment cards; and

--discussed numerous management questions concerning targeting, strategies, and cooperation between OCRS officials and strike force attorneys-in-charge.

Washington, D.C. Strike Force

At this strike force, we

--reviewed indictment cards that showed the cases prosecuted by all strike forces and analyzed a statistical report that showed all RICO cases prosecuted by U.S. Attorneys' Offices to obtain a universe

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1/The cases sampled consisted of cases classified by IRS in Special Enforcement categories 1, 2, and 3. This program includes those persons believed to be engaged in organized criminal activity, taxpayers engaged in occupations requiring gaming device stamps or wagers, and taxpayers identified as strike force subjects.

of RICO organized crime cases closed during the period of October 1, 1977, through December 31, 1979;

--verified the universe compiled with U.S. Attorneys' Offices or the attorney-in-charge of the Washington, D.C. strike force; and

--discussed numerous management questions including the review and recommendations for prosecution of RICO cases and the specific functions of this strike force.

SELECTION OF SAMPLE

To meet the objectives of our review we developed a universe of organized crime investigations closed during the period October 1, 1977, through December 31, 1979. In so doing we had assistance from the four law enforcement agencies reviewed and used their own definition of organized crime.

The universe consists of only those organized crime investigations in which that agency location was the primary investigative office. We then sampled from this universe. The table below presents the universe developed and the sample sizes used.

Agency/location	Universe developed	Random sample
ATF - New York	125	30
- Chicago	82	30
- Los Angeles	36	30
- Philadelphia	27	a/ 27
	270	117
DEA - New York	63	30
- Chicago	44	30
- Los Angeles	37	a/ 37
- Philadelphia	31	a/ 31
	175	128
FBI-RICO		
- New York	264	40
- Chicago	76	40
- Los Angeles	380	40
- Philadelphia	72	40
	792	160
FBI-Non-RICO		
- New York	233	30
- Chicago	177	30
- Los Angeles	486	30
- Philadelphia	139	30
	1,035	120
IRS - Manhattan	143	30
- Brooklyn	105	30
- Chicago	101	30
- Los Angeles	107	30
- Philadelphia	103	30
	559	150
Total	2,831	675

a/At these locations, we sampled the entire universe because the universe size was either near the original sample size or the universe size was less than 30.

Samples were taken at four different locations except for IRS where we took samples in five locations. As a result, we used the appropriate stratified formulas to compute various estimates of total activity and their associated sampling errors. Because locations had varying universe sizes, the statistics had to be weighted. For example, assume there are two agencies with universe sizes of 150 and 1,000, respectively, with a sample size of 40 each. Suppose agency A had 15 of its sample of 40 with a certain characteristic and agency B had 35 of its sample of 40

with the same characteristic. Statistically, we could not say that $\frac{50}{80}$ or 62.5 percent of the combined universe of 1,150 had this characteristic. If we had not used a weighted estimate, this would have meant that 719 cases had the characteristic. As shown below, using a weighted estimate, the estimated amount of cases with the same characteristic changes significantly from an unweighted estimate.

Agency	Universe	Sample	Characteristics found	Computed weighted percent
A	150	40	15	
B	1,000	40	35	
Total	1,150	80	50	80.9

The procedure to calculate the weighted percentage is $\frac{1}{1,150}$ (150 x $\frac{15}{40}$ + 1,000 x $\frac{35}{40}$) = 80.9 percent.

Our sample was designed to provide weighted statistical estimates at a 95 percent level of confidence.

APPENDIX I

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DAVID BOIES
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

September 17, 1979

Honorable Elmer B. Staats
Comptroller General
General Accounting Office
Washington, D. C. 20548

Dear Mr. Comptroller General:

My ongoing oversight work into the Justice Department has brought to my attention several areas of substantial concern that I believe require General Accounting Office Evaluation for my subcommittee. One such area involves organized crime and Justice's role in impeding, restricting and combating such activities. This includes the work of strike forces, FBI, and the Drug Enforcement Administration. I am especially interested in a followup of a very substantive prior GAO report dealing with organized crime strike forces, dated March 17, 1977.

GAO's report should answer the following specific questions:

1. What actions have been taken by the Justice Department to implement that report's recommendations?

2. Organized crime is a top Justice Department priority. How does Justice evaluate its successes and failures in reducing and dealing with organized criminal activity?

3. What use is being made of the Rico statute by Justice, especially the forfeiture provisions of that statute allowing government to take property and money obtained through organized crime activity?

4. Relating to strike force activities, how does Justice determine where and when a strike force unit will be established in a particular city or location? 1/

5. What is the level of effectiveness and cooperation between the U.S. Attorney's Offices and the strike forces, which constitute a separate entity outside the U.S. Attorney's Office?

1/Not addressed in this report per agreement with Senator's office.

6. What is the current status of the intelligence gathering system that has been developed and implemented by the organized crime section? 1/

Any further recommendations that you choose to make are most welcome. Agency comments are not required. The contact on my subcommittee will be Franklin Silbey. If for any reason, such as workload, the job cannot be immediately commenced, I am content to wait for a short while until adequate GAO personnel become available.

Thank you.

Sincerely,

Max Baucus, Chairman
Subcommittee on Limitations of
Contracted and Delegated Authority

1/OCRS has neither developed nor implemented any intelligence gathering system.

DIGEST OF PRIOR
GAO REPORT

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

WAR ON ORGANIZED CRIME
FALTERING--FEDERAL
STRIKE FORCES NOT
GETTING THE JOB DONE
Department of Justice

D I G E S T

Organized crime is a serious national problem. The Federal Government is making a special effort to combat it with 13 joint-agency strike forces around the country, whose goal is to launch a coordinated attack against this problem. This goal has not been accomplished. About $80 million is spent each year to investigate and prosecute organized crime figures. Although the Federal Government has made some progress in the organized crime fight, organized crime is still flourishing.

Elimination of organized crime will be difficult, if not impossible. But more could be done if Federal efforts were better planned, organized, directed, and executed.

The escalated war on organized crime began in 1966 when the President directed the Attorney General to develop a unified program against racketeering. The idea was to coordinate the resources of all Federal law enforcement agencies. In 1970 the National Council on Organized Crime was established to formulate a strategy for eliminating organized crime. The Council met for only 1 year and failed to formulate a strategy.

Work at strike forces in Cleveland, Detroit, Los Angeles, New Orleans, and New York (Brooklyn and Manhattan) showed that:

--The Government still has not developed a strategy to fight organized crime. (See p. 9.)

--There is no agreement on what organized crime is and, consequently, on precisely whom or what the Government is fighting. (See p. 8.)

--The strike forces have no statements of objectives or plans for achieving those objectives. (See p. 10.)

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March 17, 1977

DIGEST OF PRIOR
GAO REPORT

--Individual strike forces are hampered because the Justice attorneys-in-charge have no authority over participants from other agencies. (See p. 11.)

--No system exists for evaluating the effectiveness of the national effort or of individual strike forces. (See ch. 3.)

--A costly computerized organized crime intelligence system is, as the Department of Justice agrees, of dubious value. (See ch. 5.)

Strike forces have obtained numerous convictions; however, sentences generally have been light. At the strike forces reviewed, 52 percent of the sentences during a 4-year period did not call for confinement, and only 20 percent of the sentences were for 2 years or more. (See ch. 4.)

GAO presents detailed recommendations that point out the need to:

--Identify what and whom the strike forces are combating.

--Develop a national strategy for fighting organized crime.

--Centralize Federal efforts--give someone the responsibility and authority for developing plans and overseeing their implementation.

--Establish a system for evaluating the effectiveness of the national and individual strike force efforts.

The Department knows the program is in trouble. In a recent study it concluded that although the program had been in operation for nearly a decade, no one could seriously suggest that organized crime had been eliminated or even controlled. The Department of Justice therefore agrees that the Federal effort against organized crime can be better managed. (See app. VII.)

The Department stated that formulating a universally applicable and acceptable definition

APPENDIX II

DIGEST OF PRIOR
GAO REPORT

of organized crime will be difficult, although necessary, because of the special purpose for which the strike forces were created. In practice, the work done by strike forces has been hampered by this problem of definition. Since strike forces were established for a special purpose, there is little reason why an acceptable definition cannot be agreed upon. (See p. 14.)

The Department also stated that it is making management changes to improve its program and that the National Council on Organized Crime, if convened as recommended by GAO, need not therefore undertake a management function. According to the Department, the Council should serve rather as a forum where general matters are discussed and where an overview of organized crime strategy is developed. (See p. 14.)

Because the Attorney General has the role of coordinating the fight against organized crime, the Department of Justice should continue to manage the strike force program. However, because the Council includes officials from all participating agencies, it could be the vehicle to bring about a more coordinated Federal effort. The Council could produce a clear statement on what is expected of the strike force program, set specific ways to most effectively meet program objectives, and establish the commitment of resources necessary from the agencies to carry out the program's objectives. (See pp. 14 and 15.)

The Department of Justice has been conducting its own review of the program since January 1976 and said that changes in managers of the Organized Crime and Racketeering Section and in the strike forces' operations respond to many of GAO's concerns.

BEST DOCUMENT AVAILABLE

SUMMARY OF U.S. CODE VIOLATIONS
FOR FOUR SELECTED STRIKE FORCES--INDICTMENTS AND CONVICTIONS
OBTAINED DURING FISCAL YEARS 1978 and 1979, and FIRST QUARTER OF FISCAL YEAR 1980 (note a)

U.S. Code			Brooklyn		Chicago		Los Angeles		Philadelphia		Total	
Title and Names	Chapter	Name	Indicted	Convicted	Indicted	Convicted	Indicted	Convicted	Indicted	Convicted	Indicted	Convicted
15 - Commerce and Trade	1	Monopolies and Combinations Restraint of Trade	1	0	0	0	0	0	0	0	1	0
	2A	Securities and Trust Indentures	0	0	0	0	0	0	21	5	21	5
	2B	Securities Exchanges	0	0	0	0	0	0	30	18	30	18
	41	Consumer Credit Protection	17	14	0	0	0	0	0	0	17	14
Total			18	14	0	0	0	0	51	23	69	37
18 - Crimes and Criminal Procedures	1	General Provisions	44	21	41	24	19	10	55	27	159	82
	11	Bribery and Graft	4	4	0	0	0	0	4	4	8	8
	19	Conspiracy	64	23	52	36	22	16	43	24	181	99
	21	Contempts	3	2	0	0	0	0	0	0	3	2
	25	Counterfeiting and Forgery	13	7	5	3	6	3	0	0	24	13
	31	Embezzlement and Theft	17	1	7	5	0	0	3	0	27	6
	35	Escape and Rescue	1	0	0	0	0	0	0	0	1	0
	40	Importation, Manufacture, Distrib., and Storage of Firearms	0	0	2	2	0	0	8	2	10	4
	42	Extortionate Credit Transactions	10	8	3	3	6	5	1	1	20	17
	43	False Personation	2	2	0	0	0	0	0	0	2	2
	44	Firearms	5	0	5	3	3	1	1	1	14	5
	47	Fraud and False Statements	7	3	1	1	15	8	3	1	26	13
	50	Gambling	0	0	0	0	3	1	0	0	3	1
	55	Kidnapping	0	0	1	1	1	1	0	0	2	2
	63	Mail Fraud	6	0	8	3	7	4	49	27	70	34
	73	Obstruction of Justice	3	3	2	1	7	1	0	0	12	5
	79	Perjury	2	0	4	2	0	0	2	1	8	3
	83	Postal Service	0	0	0	0	3	2	2	0	5	2
	95	Racketeering/Gambling	34	19	2	0	32	10	11	5	79	34
	96	Racketeer Influenced and Corrupt Organizations	16	2	2	2	31	7	55	29	104	40
	113	Stolen Property	2	2	34	26	2	1	4	3	42	32
	103	Robbery and Burglary	1	1	0	0	0	0	0	0	1	1

APPENDIX III

SUMMARY OF U.S. CODE VIOLATIONS
FOR FOUR SELECTED STRIKE FORCES--INDICTMENTS AND CONVICTIONS
OBTAINED DURING FISCAL YEARS 1978 and 1979, and FIRST QUARTER OF FISCAL YEAR 1980 (note a)

U.S. Code			Brooklyn		Chicago		Los Angeles		Philadelphia		Total	
Title and Names	Chapter	Name	Indicted	Convicted	Indicted	Convicted	Indicted	Convicted	Indicted	Convicted	Indicted	Convicted
	207	Release	0	0	0	0	1	1	0	0	1	1
	231	Probation	1	1	0	0	0	0	0	0	1	1
	Appendix	Unlawful possession or Receipt of Firearms	0	0	0	0	0	0	1	1	1	1
Total			235	99	169	112	155	71	242	126	804	405
21 - Food and Drugs	13	Drug Abuse Prevention and Control	26	17	2	2	4	2	26	9	58	30
Total			26	17	2	2	4	2	26	9	58	30
26 - Internal Revenue Code	53	Machine Guns, Destructive Devices, and Certain Other Firearms	8	5	6	5	1	1	0	0	15	11
	55	Crimes, Other Offenses, and Forfeitures	32	24	6	5	2	1	14	11	54	41
Total			40	29	12	10	3	2	14	11	69	52
29 - Labor	7	Labor Management Relations	11	5	2	0	0	0	0	0	13	5
	11	Labor Management Reporting and Disclosing Procedures	17	7	0	0	1	0	0	0	18	7
Total			28	12	2	0	1	0	0	0	31	12
Overall total			347	171	185	124	166	75	333	169	b/ 1031	539

a/ Each line represents the number of persons indicted and convicted for violating the indicated chapter of the title.

b/ Total number of violations exceeds the number of defendants indicted (416), because some defendants were indicted on several violations.

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APPENDIX III

U.S. Department of Justice

AUG 13 1981

Washington, D.C. 20530

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Organized Crime Flourishes: Federal Efforts To Fight It Need To Be Strengthened."

Four years have passed since the General Accounting Office (GAO) issued its last report on the Federal program to combat organized crime. With the assistance of the recommendations in the last GAO report, and with persistent, dedicated efforts by all the agencies participating in the Strike Force program, the Department has substantially strengthened the organized crime program. The 1981 GAO draft report takes careful note of many of the management improvements that the Organized Crime and Racketeering Section (OCRS) has introduced. However, a better gauge of the Department's progress is to be found in the unprecedented record of successful prosecutions that the Strike Forces have achieved in the last two years. Since 1979, the Strike Forces have prosecuted and convicted the top leaders of organized crime syndicates in five major cities--New York, Kansas City, Los Angeles, Rochester, and Detroit. The Department has successfully challenged the hold of organized crime on the east coast shipping industry, and halted an epidemic of truck hijackings plaguing southern New England.

We do not call attention to those successes in order to challenge the unassailable conclusion that there is room for improvement. Indeed, we concur wholeheartedly with many of the report's suggestions and have already taken successful steps to implement several of the necessary changes. Rather, we wish to emphasize two key points: first, the successful prosecution of organized crime conspiracies is a slow, painstaking process. A single investigation and prosecution typically takes two years and often more to complete. As a result, the focus of the GAO report on cases closed between October 1, 1977 and December 31, 1979, does not reflect the results of the important changes the Department has made in response to the earlier GAO report, or the effect of other innovations since 1978. Many of the cases studied in this report had in fact already been opened prior to the completion of your last report. Focusing attention on the results achieved during the last two years would place the organized crime problem, the Strike Force program, and the scope of potential improvement in a more complete and current perspective. We submit for your benefit as Enclosure I a summary of our recent efforts in each of the four organized crime priority areas--labor racketeering, infiltration of legitimate businesses, public corruption, and narcotics. [See GAO note.]

GAO note: Because of the magnitude of the enclosure GAO did not include it in the final report.

Second, as we noted in response to your report of 1977, Federal law enforcement efforts can often deal only with one side of the organized crime equation. To the extent that the success of organized crime depends upon consensual crimes such as illegal gambling, narcotics, prostitution, loansharking, fencing, labor racketeering and public corruption, it will continue to "flourish" as long as the American public continues its patronage of these income-producing activities. The Department will never be deflected from its goal of combatting organized crime, and will continue its efforts to improve the planning, organization, direction, and execution of the Federal program, but our recent successes attest to the fact that the problem of organized crime may persist in spite of our best and most successful efforts.

Because the further improvements suggested by the draft report are limited to four specific areas, we propose to address our comments to each suggestion individually. In addition, the draft report comments upon sentences imposed on individuals convicted by Strike Forces and to impediments in the Racketeer Influenced and Corrupt Organizations (RICO) statute, 18 U.S.C. §1961 et seq. Although the draft report does not call for any specific action by the Department in these two critical areas, we wish to add our observations to those of GAO and to note developments since the GAO review.

Case Initiation Reports

As the report correctly notes, the system of Case Initiation Reports (CIR) was developed to permit OCRS to monitor potential prosecutions by the Strike Forces and to ensure that Strike Force resources are devoted to cases falling in one or more of the priority areas. The CIRs are also circulated to the U.S. Attorneys and facilitate complete communication between the Strike Force and the U.S. Attorney at the early stages of an investigation. The draft report notes that for cases closed during 1977 and 1978, the CIR requirement was not followed in a large percentage of cases.

The problems in 1977 and 1978 observed by GAO stem from a number of sources and do not reflect a general disregard for the CIR requirement; indeed, the review includes a number of cases opened before a CIR requirement was imposed. Nevertheless, we share GAO's view of the importance of CIRs, and since the period covered by the report the OCRS has made concerted and successful efforts to ensure compliance with this requirement. Of the 184 cases indicted during 1980, 175, or more than 95 percent, had an approved CIR on file at the time of indictment.[1/] To further ensure compliance, the OCRS has recently adopted two additional requirements: first, the OCRS will not authorize any indictment, including one charging a tax offense, unless it has previously approved a CIR for the underlying investigation. Second, all correspondence between the Strike

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1/ The OCRS has concluded that the 5 percent discrepancy is accounted for by the fact that until recently CIRs were not required for proposed Internal Revenue Service (IRS) investigations, which were reviewed especially by the Tax Division of the Department of Justice.

Forces and OCRS headquarters concerning a case or an individual must include reference to the CIR. Such correspondence includes applications for electronic surveillance, requests for orders to compel testimony, daily reports, and prosecution recommendations. These two requirements are intended to ensure that any failures to adhere to the CIR requirement will come immediately to the attention of the Chief of the OCRS or the Deputy Chief responsible for the supervision of the particular Strike Force. We believe that along with continued emphasis of the importance of CIRs, these two requirements will solve any remaining problems associated with the preparation of CIRs.

Evaluation of the Effectiveness of the Organized Crime Program

The Department believes strongly in the need for formal mechanisms to evaluate the effectiveness of the Strike Forces in combatting organized crime. We have long shared the concern voiced in the 1977 GAO report for the need to develop sophisticated methods of evaluation, and are working assiduously in a number of areas to improve our ability to assess Strike Force performance. As the report notes, we are now developing a review process to supplement the National Organized Crime Planning Council (NOCPC) visitations to each Strike Force. This system, which involves a detailed study by a trained policy analyst of the goals, efforts, and results of the work of a Strike Force, provides a sound predicate for assessing the quality of Strike Force performance and for identifying particular areas needing improvement.2/ Since the pilot project in Buffalo noted in the report, staff analysts from the Criminal Division's Office of Policy and Management Analysis (OPMA) have completed a similar review of the Miami Strike Force. We expect soon to be evaluating the results of this effort. If it proves as useful as the pilot project, the Criminal Division will fully implement this system as soon as possible. Like GAO, we believe that this system is "promising," and, subject to budgetary constraints, we anticipate that OPMA will begin immediately to conduct two to three such Strike Force reviews each year.

Additionally, the OCRS is participating in a study underwritten by the National Institute of Justice that will explore different means of generating measures of effectiveness for use in evaluating law enforcement efforts against organized crime. The study, supervised by the Temple University School of Law, is designed to address directly the problems of evaluation raised by the 1977 GAO report. It will consider the general question of whether objective indicia can be applied successfully to measure the effectiveness of law enforcement on organized crime, and will attempt to devise specific systems or measures of effectiveness. The Criminal Division is committed to integrating the results of this study into the system of Strike Force evaluation now under development by OPMA.

Finally, through the use of the Criminal Division's recently implemented Case Management Information System (CMIS), the OCRS has enhanced its ability to conduct what the report describes as "subjective evaluations." The CMIS enables

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2/ The draft report suggests that consideration is being given to "ranking" organized crime figures for the purpose of evaluating the quality of cases. No such proposal is under consideration. A similar system was employed in the past without success.

the Chief of the OCRS and his deputies to constantly survey important features of the caseload of each Strike Force. Although, as the report notes, this method of review does not yield any direct insight into the effect of the Strike Forces' activities on organized crime, it is nevertheless an essential technique to assure that OCRS resources are focused on important cases within the priority areas.

In deference to the above, we do not wish to underestimate the conceptual complexity and practical difficulties associated with developing formal evaluation mechanisms. The Department has expended considerable time and effort over the last several years in studying the problem, and both the academic experts and the law enforcement professionals with whom we have consulted agree that developing a method of measuring the effect of law enforcement on organized crime presents unprecedented theoretical and practical challenges. Indeed, one purpose of the National Institute of Justice study is to determine whether any objective means of measurement has promise in this area.

Transfer of Strike Force Cases to U.S. Attorneys

The Chief and Deputy Chiefs of the OCRS exercise constant supervision to ensure that Strike Force resources are deployed only in cases that, by their nature and complexity, demand the use of a special prosecutive unit. We are in complete agreement with the principle that "all appropriate cases be transferred to U.S. Attorneys' Offices for prosecution." Nevertheless, we can find no basis for the draft report's contention that Strike Forces are "not usually transferring" routine cases to the U.S. Attorneys, nor can we support the specific recommendations contained in the draft report.3/

The draft report contends that of 180 cases the GAO reviewed, 29, or approximately 16 percent, should have been transferred to the U.S. Attorney for prosecution. We believe, however, that these 29 include cases in several categories in which Strike Force participation was completely appropriate. Often, a long and complex investigation will generate a number of spin off cases involving perjury, tax fraud, etc. Although these cases may be relatively uncomplicated legally, they generally require familiarity with an imposing body of facts that a Strike Force attorney has already mastered. To characterize these cases as simple or minor ignores the tremendous expenditure of resources that would be required to acquaint an Assistant U.S. Attorney with the case. By agreement with the U.S. Attorneys, Strike Forces traditionally handle such spin off cases. Of the 29 cases noted in the draft report, seven, including the matter relating to bankruptcy fraud specifically noted at page 18 of the draft report, fall into this category.

The draft report's recommendation that U.S. Attorneys be kept "involved in the details of complex cases so that if minor spin off cases evolve, the U.S. Attorneys' Offices will be able to prosecute the cases" seems to us an injudicious waste of resources. Many hundreds or thousands of hours would typically be required to keep an Assistant U.S. Attorney "involved in the details of

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3/ Although the draft report also reviewed investigations conducted by the Drug Enforcement Administration, the majority of DEA cases are routinely prosecuted by Controlled Substances Units within the U.S. Attorney's Offices.

complex cases." This considerable effort could only be made at the expense of other pressing work of the U.S. Attorney's office; it would be wholly wasted if, as is often true, no spin off cases develop. Where spin off cases are generated, the effort would serve only to vindicate, at a considerable cost of scarce prosecutorial resources, the principle that Strike Forces should handle only complex cases. In our view, this costly undertaking cannot be justified.

Additionally, Strike Forces sometimes bring minor charges against an organized crime member or associate as part of a more elaborate strategy to obtain his cooperation or "flip" him into becoming a witness against more important targets. Strike Force prosecution of these cases is an essential element of the goal of focusing comprehensive, coordinated resources on the prosecution of organized crime. To transfer such cases to the U.S. Attorneys' offices would undermine the purpose of these prosecutions. Attorneys develop expertise and perspective in a long term investigation; they develop a working relationship with agents and a reputation in the criminal community. The Strike Force attorney handling a major investigation is in a far better position to demand complete information from a lower-level criminal. He is far better suited to confront the criminal with other information, to evaluate the accuracy of any information the criminal provides, and to exploit such information in other contexts. Shuffling defendants between the U.S. Attorney and the Strike Force would sacrifice these advantages with no savings--and in all likelihood a greater expenditure--of Federal resources. Four cases cited by the draft report fall into this category.

The draft report recommends "transferring to the U.S. Attorneys' Offices those cases in which the potential of a defendant becoming a witness in a more significant case is questionable." The emphasis on transfer, we believe, obscures the basic issue of the value of these cases. Where the potential of successfully "flipping" a witness is doubtful and the case would not otherwise be prosecuted Federally, we believe that the proposed prosecution should be disapproved, and no further action taken. Transferring such cases might free a Strike Force attorney, but would remain a misallocation of Federal resources. On the other hand, those cases in which the possibility of a successful "flip" is a close question are precisely those in which the expertise and intelligence information available to the Strike Force may spell the difference between failure and success. Transfer of these cases would frustrate the purpose for which they were brought with no savings of Federal resources.

The Strike Forces have in the past accepted an extremely small number of relatively uncomplicated cases to provide essential trial experience for new attorneys. We share the concern of the authors of the draft report for limiting the number of cases, and believe that the OCRS has substantially complied with GAO's recommendation that it hire only experienced attorneys. The draft report notes four cases that had been accepted for training purposes. Even this small number, however, does not reflect present practices. Many of the cases surveyed in the draft report were opened when the OCRS annually hired approximately 15 to 20 attorneys with no prosecutive experience through the Department's Honor Graduate Program. We have since limited our participation in the Honor Graduate Program to accepting two new attorneys per year. Unlike the Honor Graduate attorneys who began work during the period surveyed by GAO, the graduates are now not assigned to the Strike Forces until they have completed a year with the Department that typically includes a trial assignment with a U.S. Attorney. The OCRS requires all other attorney applicants to demonstrate

substantial trial experience. These changes obviate the need to routinely accept uncomplicated cases for the purpose of training and have reduced such cases to a negligible proportion of the Strike Force dockets.

The Strike Forces occasionally prosecute cases that would ordinarily be handled by the U.S. Attorney when specifically directed by the Assistant Attorney General of the Criminal Division, or when requested by the U.S. Attorney. These cases, such as the recent series of ABSCAM prosecutions of Members of Congress, generally involve complex investigations, novel or difficult legal issues, or particularly sensitive circumstances. Although they do not involve traditional organized crime groups, they are handled by the Strike Forces only after a reasoned determination by the leadership of the Criminal Division that the interests of Federal law enforcement are best served by the use of Strike Force skills and resources. The 29 cases identified in the draft report also include cases falling into this category.

Finally, in a series of meetings between GAO auditors and OCRS headquarters personnel, it became clear that GAO does not consider it appropriate for the Strike Forces to prosecute instances of labor racketeering in which there is no traditional organized crime involvement. Since the 1976 Attorney General guidelines, upon which the draft report relies for authority on the allocation of cases between Strike Forces and U.S. Attorneys, the jurisdiction of the OCRS has been expressly expanded to include labor racketeering. The Strike Forces do handle, and are uniquely suited to handling, those labor racketeering cases involving lengthy and complex investigations of large scale union corruption, which often require the cooperation of several investigative agencies in several states. [See GAO note.]

Even looking at the data in the draft report in a light most unfavorable to the OCRS, at most 14 of 180 cases may have been inappropriately prosecuted by the Strike Forces. By any standard, this statistic does not reflect a pattern of involvement by Strike Forces in cases that should be handled by the U.S. Attorneys. These cases represent instead the margin at which the U.S. Attorney and the Strike Force chief must face difficult questions of judgment regarding the allocation of resources. In every case, the assignment for prosecution is the product of a decision reached jointly by the U.S. Attorney and the Strike Force chief. In each instance, the U.S. Attorney and the Strike Force chief are required to take into account fine questions of resources, skills, other investigative opportunities, and caseloads. Sometimes, as in the cases identified in the draft report, the U.S. Attorney and the Strike Force chief agree that a case should be prosecuted by the Strike Force. At least as often, however, cases are transferred to the U.S. Attorney. The process of consultation between the U.S. Attorney and the Strike Force chief begins informally when an investigation is first proposed--they review each case when a CIR is prepared, and consult periodically throughout each investigation. In this fiscal year, approximately 10 percent of all Strike Force investigations have been transferred to the U.S. Attorney or local district attorney for prosecution. Other investigations either have been transferred at the outset without any investment of Strike Force resources (and, consequently, without ever appearing on CIRs) or have been taken directly to the U.S. Attorney by the investigative agency.

GAO note: GAO's analysis of strike force cases did not include cases that fell into the labor racketeering category. However, it should be noted that Justice has never revised the Attorney General's guidelines as it states above. In fact, an OCRS official subsequently agreed that no such revision has ever been made.

Having carefully reviewed both the cases surveyed by the GAO as well as the current docket of the Strike Forces, we see no reason to take the steps outlined in the draft report to further encourage the transfer of cases from the Strike Forces to U.S. Attorneys. For the reasons already set forth, we believe these actions would seriously undermine the efficiency of the Strike Forces with no savings--and perhaps a greater expenditure--of Federal prosecutorial resources.

Executive Committees

Coordination of the efforts of specialized investigative agencies with the resources of a specialized prosecutive unit is a key element of the Strike Force concept. Although we believe strongly that efforts should be made to enhance cooperation among the investigative agencies and prosecutors, our experience leads us to conclude that resurrection of executive committees would not improve cooperation and coordination.

The draft report notes that the Attorney General guidelines require that an executive committee composed of the U.S. Attorney, the Strike Force chief, the Federal Bureau of Investigation special agent-in-charge, and other key individuals from the investigative agencies be convened at least once every two weeks to review efforts against organized crime and to plan enforcement strategy. The guidelines in effect codified what was then the prevailing practice among Strike Forces. Since that time, however, we have concluded on the basis of extensive experience in all Strike Forces that frequent formal conferences of those high-level officials do not benefit and, in fact, may impede cooperation, coordination, and planning. The practice was dropped in most districts by agreement between the U.S. Attorney and the Strike Force chief. In most cases, circumstances are simply not so fluid as to justify plenary sessions every two weeks, and the routine problems of case-by-case coordination are better handled through smaller working groups composed of attorneys and representatives of agencies involved in particular investigations. Indeed, most Strike Forces do convene periodic meetings of lower-level agency representatives to share information, coordinate investigations, and develop the personal relationships that are essential to effective cooperation among agencies.

Our experience also showed that to the extent that Strike Forces have been hindered by a lack of cooperation and joint planning, the cause has most often been a reluctance among agencies to share intelligence information and investigative strategies with their counterparts, rather than a dearth of opportunities to exchange information. The executive committees were not suited to addressing this problem. The best solution has proved to be the careful fostering of trust between the Strike Force chief and key agency personnel, rather than formal committees or appeals through an agency's hierarchy.

We are not persuaded by the arguments in the draft report that an executive committee would enhance agreement on plans and priorities. Although the report quite correctly notes that the Strike Force chief lacks line authority over the investigative agencies, it fails to note that the U.S. Attorney, who would head an executive committee, similarly lacks line authority over the investigative agencies. Although the Strike Forces regularly consult with the U.S. Attorney about the progress of the organized crime program in his district, and rely on the expertise of his office when disputes with investigative agencies do arise, we fail to see how the regular presence of the U.S. Attorney at planning meetings will resolve any problems that stem from an absence of line authority.

We have found instead that cooperation and planning are best enhanced by a number of discrete management techniques, including regular discussions between the Strike Force chiefs and agency representatives, periodic meetings to consider problems and strategies in particular target areas, encouragement in appropriate cases of joint investigations involving several investigative agencies and attorneys from the Strike Force and U.S. Attorney's office, and periodic briefings of the U.S. Attorney by the Strike Force chief. These approaches are best designed to capitalize on the investigative and prosecutive resources available to the Strike Forces. The OCRS has recently recommended changes to conform the Attorney General guidelines to the practices most likely to yield effective coordination and planning. Under the proposal, the executive committee would be required to meet only semiannually to review the progress of organized crime programs in the district and to address any problems of coordination and cooperation. In addition, the executive committee could propose the addition of local organized crime problems to the district's organized crime program. The Strike Force Chief would retain principal responsibility for daily coordination and cooperation among the agencies and for keeping the United States Attorney fully informed of organized crime matters and investigations.

GAO contends that a large number of cases opened by investigative agencies never reach prosecution due to a lack of coordination and agreement on priorities. Administrative closure and declination decisions are based on a complex array of factors, including case viability, evidence and witness problems, due process issues, and jurisdictional questions. We cannot conclude, on the basis of the data presented in the draft report, that the number of cases closed without prosecution reflects an absence of centralized planning or coordination. Nor can we agree with the implication that the absence of coordination results in the investigative agencies devoting a substantial portion of their resources to routine rather than priority cases. Most agencies employ formal mechanisms to assess proposed cases and to concentrate resources in priority areas. For example, the DEA uses a complex system known as G-DEP (Geo-Drug Enforcement Program) that classifies violators according to geographical areas of operation, types and quantities of drugs involved, and levels of involvement of individual violators. Assignment of G-DEP classifications (Class I-VI) to violators and cases is a rigorous, systematic process requiring verification both in the field and at headquarters. Personal judgments and characterizations of DEA investigators do not significantly enter into the process. Indeed, GAO's characterization of "type and quantity of drug" as being the key elements in determining the proper classification is incorrect. The level of involvement of the violator--e.g., "Laboratory Operator," "Financier," "Head of Criminal Organization"--is equally important, as GAO itself pointed out in its December 21, 1973 report, "Drug Enforcement Administration Difficulties in Immobilizing Major Traffickers," (B-175425).

Sentences Imposed on Individuals in Organized Crime Cases

We recognize, of course, that the goal of Strike Force prosecutions is not simply to convict members of organized criminal groups, but to disrupt or eliminate the criminal activities of these organizations. This purpose is frustrated whenever an offender receives a sentence that does not fairly reflect the seriousness of his crime or the scope of his criminal activities. Although the sentencing decision rests ultimately within the discretion of the trial judge, the OCRS has emphasized the opportunities that are available to Government attorneys to ensure that all pertinent information is presented to the court and that special sentencing provisions are employed when appropriate.

In particular, since the period surveyed by GAO, the OCRS has obtained express judicial approval in United States v. Fatico, 603 F.2d 1053 (2d Cir. 1979), for the trial court to use a defendant's membership in and ties to organized crime as material factors in sentencing. The so-called Fatico procedure has greatly enhanced the ability of the Strike Forces to bring important information about the defendant to the attention of the court, and has been invaluable in obtaining substantial sentences in several recent prosecutions of key organized crime leaders. In addition, the OCRS continues to use, when appropriate, the provisions of the Dangerous Special Offender (DSO) statute, 18 U.S.C. 3575 (1976), which permits extended sentences in cases involving certain classes of career criminals. The OCRS has recently circulated to all Strike Forces a research memorandum outlining the DSO provisions and explaining the special procedural requirements for their use. After review by the General Litigation and Legal Advice Section of the Criminal Division, this memorandum will be incorporated into the U.S. Attorneys' Manual for use by other Criminal Division attorneys and U.S. Attorneys.

Over the last two years, which is a period subsequent to the cases reviewed in this draft report, individuals convicted by the Strike Forces have received substantially greater sentences than those observed in the draft report. In fiscal year 1981, for example, convicted defendants have been sentenced to an average term of about 43 months. Forty-four percent have received sentences of two years or more, 30 percent have been sentenced to less than two years, and 26 percent have received probation. Although it is impossible to isolate the precise causes for this increase, we believe that the increased emphasis on sentencing and the use of the Fatico procedure have played an important part in what we regard as a substantial improvement in the average term of sentence.

We note the draft report states that "available data do not permit meaningful conclusions about conviction rates obtained by strike forces." We are not certain what shortcomings the GAO perceived in the data it reviewed. The OCRS regularly reviews closed cases to obtain statistics on final results and its survey shows that during the 1979 and 1980 fiscal years the Strike Forces convicted 85 percent of the defendants whose cases reached final resolution. We would, of course, be happy to review these statistics with GAO, and would appreciate GAO's advice if it concludes that these statistics are unsatisfactory. [See GAO note.]

The RICO Statute

We share with GAO a belief in the importance of the RICO statute in fighting organized crime, and we are as confident as the authors of the draft report that the recent promulgation of RICO guidelines and centralization of RICO review in the OCRS will help ensure the appropriate use of the statute and the positive development of case law. Nevertheless, we remain convinced that the opportunities presented by the RICO statute cannot be completely exploited without key statutory revisions, particularly in the area of forfeitures. We agree in principle with the GAO on the need for legislative revision and propose only minor changes in the recommendations made by the draft report.

In our view, GAO is correct in singling out the RICO forfeiture provisions for change. We believe, however, that amendment of RICO to reach proceeds or substitute assets is not sufficient. Our experience demonstrates the need for thorough revision of the forfeiture provisions to clarify the uncertain areas of third party rights, preservation and disposition of property subject to

GAO note: This statement has been deleted from the final report because we did not intend to take issue with Justice's statistics.

forfeiture, and judicial discretion. Indeed, the problems with the RICO forfeiture provisions are so extensive that for most narcotics prosecutions we have relied instead on the forfeiture provisions of the Continuing Criminal Enterprise statute, 21 U.S.C. § 848, and the civil forfeiture provisions of the Controlled Substances Act, 21 U.S.C. § 881. Consequently, while we share GAO's opinion of the virtues of S. 1126, the Criminal Forfeitures Amendments Act of 1981, we believe more comprehensive review is required. The OCRS, together with other elements of the Department, is developing the type of comprehensive amendment we believe is required. Moreover, as the report observes, other legislative changes are required in order to identify and trace assets subject to forfeiture. In particular, the Department strongly supports revision of the Tax Reform Act of 1976 to facilitate access to tax return information in forfeiture investigations.4/

In supporting any such amendments, we must bear in mind, however, that RICO applies equally to wholly illegitimate as well as legitimate, but corruptly influenced, enterprises. Because legitimate enterprises are more scrupulous than organized crime in preparing and preserving business records, the forfeiture provisions are often more potent in white collar crime cases than in cases against traditional organized crime groups. In formulating amendments to eradicate the economic base of organized crime, we must take care to assure that the new provisions do not inflict economic penalties in white collar cases that are wholly disproportionate to the seriousness of the criminal activity.

The GAO correctly notes that the Department has yet to develop "a definitive policy regarding the collection and disposition of forfeited assets." As the report indicates, too few cases have been decided to permit codification in this difficult and complicated area. We wish to call attention, however, to two important steps the Department has taken recently that may alleviate some of the imposing procedural problems. In December 1980, the Criminal Division published a manual on criminal forfeiture designed to acquaint Government attorneys with the relevant substantive and procedural issues relating to forfeiture. Additionally, by centralizing RICO review in the OCRS, we hope to assure the orderly development of case law and to develop a source for expert information and advice as we improve our knowledge in this area.

4/ The draft report states at page 34 that: "To conduct a RICO financial investigation law enforcement agencies need specially trained agents . . . . In hearings before the Permanent Senate Subcommittee on Investigations, on December 7, 1979, the Administrator of DEA acknowledged that his agency lacked sophisticated training in the financial area." This observation is inaccurate and misleading. The statement regarding DEA financial training was that "DEA, with its best trained investigators and assistance from Customs, the FBI and other agencies, is not in the same league as the IRS in terms of financial expertise and financial information. And, in this respect, the Tax Reform Act of 1976 has had a chilling effect on our financial investigations." Like the FBI and other investigative agencies, DEA employs specially trained agents with financial backgrounds. But the ability of agents from all investigative agencies to conduct successful financial investigations is curtailed by the difficulty the Tax Reform Act imposes in obtaining cooperation from the IRS. [See GAO note.]

GAO note: Report revised to more clearly state what the DEA Administrator said. See page 34.

APPENDIX IV

We diverge from the conclusions of the draft report in only one respect: the emphasis of the report on the dollar value of forfeited assets overlooks the significant achievements of the OCRS in the use of RICO forfeitures against labor racketeering and public corruption. In several cases, the Strike Forces have successfully used RICO forfeitures to remove corrupt union leaders from office and to eliminate the source of their influence. Although one cannot assign a monetary value to such forfeitures, we believe that they have nevertheless been of prime importance in pursuing the goal of purging legitimate organizations of corrupt influence.

The Department appreciates the opportunity to comment on the draft report. Should you desire any additional information, please feel free to contact me.

Sincerely,

Kevin D. Rooney

Kevin D. Rooney
Assistant Attorney General
for Administration

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

AUG 14 1981

Dear Mr. Anderson:

We refer to your letter of July 6, 1981, which enclosed copies of your proposed report to Senator Max Baucus regarding Federal efforts to fight organized crime. In general we feel that the report is constructive and makes recommendations which will improve the fight against organized crime.

We agree with the proposal to establish an executive committee in each strike force. We believe that it is important that this executive committee be made up of the heads of all the agencies which have personnel assigned to an individual strike force. We agree that the executive committees are a vehicle with which strike forces and law enforcement agencies can formulate plans and agree on priorities and targets to be investigated. It is our feeling, however, that decisions on the utilization of investigative resources must be left to the discretion of individual bureau heads. Where these decisions conflict with the perceived needs of a strike force there should be a mechanism for referral back to the Justice Department and the headquarters of the concerned enforcement bureau for resolution of the problem. It is our belief that this type of situation will occur on very rare occasions.

The Treasury enforcement bureaus and the IRS agree that all appropriate cases should be transferred to the U.S. Attorney's office for prosecution rather than using the limited resources of the strike forces. Such a policy should permit strike forces to bring simple charges against a defendant as part of a more elaborate prosecutive strategy to "flip" an organized crime member so the defendant becomes a witness in a more significant case. We also endorse your proposal to train strike force attorneys in U.S. Attorneys' offices prior to their actual assignment to strike forces.

On pages 26, 34, 35, and 38 of the report text and page iii of the digest section, mention is made that forfeiture investigations could be enhanced by more extensive use of IRS expertise than is currently the practice. The report further states that Justice officials agree that closer cooperation with IRS on RICO investigations would be helpful. IRS Criminal Investigation Division officials have been meeting with FBI officials and a memorandum of cooperation is currently being reviewed by executives of both agencies. One of the salient points of this agreement deals with the FBI's use of the RICO statutes and how IRS can be of assistance when a joint investigation is conducted by both agencies. In connection with IRS participation in forfeiture investigations under the RICO statute, it is important to note that the provisions of the Tax Reform Act of 1976 regarding disclosure must be adhered to and in some cases these provisions will prevent IRS participation. The Treasury Department will support efforts to amend the Tax Reform Act of 1976 so that IRS can more easily provide information in non-tax criminal matters under proper safeguards.

As a final comment, the GAO draft report does mention the recent efforts by the Service to streamline and simplify its procedures for disclosing tax information for nontax criminal purposes, and for obtaining approval for a joint tax/nontax grand jury. (See, IRS and Nontax Related Criminal Enforcement Investigation, Hearing Before the Subcommittee on Oversight of the Internal Revenue Service of the Committee on Finance, 96th Cong., 2d Sess. 152-154 (1980) (statement of Jerome Kurtz, Commissioner, Internal Revenue Service).) These changes have resulted in some improvement in coordination between the Service and other members of the law enforcement community.

Sincerely,

Roscoe L. Egger, Jr.
Commissioner
Internal Revenue Service

John M. Walker, Jr.
Assistant Secretary
(Enforcement & Operations)

Mr. William J. Anderson
Director
General Government Division
U.S. General Accounting Office
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